

FEDERAL BUREAU OF INVESTIGATION
FOI/PA
DELETED PAGE INFORMATION SHEET
FOI/PA# 1171519-1

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43/126 148

TRANSMIT VIA: AIRTEL

CLASSIFICATION: Unclass

DATE: 2/7/94

1.45

FROM: Director, FBI (63-0)

TO: SAC, San Francisco (PERSONAL ATTENTION)

ELMER PRATT, AKA "GERONIMO";
INQUIRY OF GIL GARCETTI,
LOS ANGELES COUNTY DISTRICT ATTORNEY;
OO: HQ
BUDED 2/18/94

Re: telcalls of Unit Chief [redacted] to
ASAC Mark Mershon, dated 2/7/94.

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Enclosed for (SF) San Francisco are two copies of a letter and enclosures from Mr. Gil Garcetti, Los Angeles County District Attorney, to Attorney General (AG) Reno, dated 12/1/93. (2)

For information of SAC, San Francisco, Mr. Garcetti has brought this matter to the attention of AG Reno and has requested her assistance in determining if the FBI has in its possession any information which will impact on Elmer "Geronimo" Pratt's habeas corpus petition. Mr. Garcetti has advised that two depositions, dated April 1991, were brought to his attention. These depositions allege that the witnesses reviewed FBI files in 1975 and during these reviews observed files which directly

[redacted]
Garcetti is seeking to resolve the issues on the existence of this information.

San Francisco is requested to review the enclosed letter and enclosures. San Francisco will thereafter review its [redacted]

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Enclosure (5)

cc: SF 197-39

1 - [redacted]
1 - [redacted]
1 - [redacted] (Information)

AS:as (8)

① - [redacted]
1 - Tickler

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b7C

Fed Exp 2/7/94 4:00 pm

7/18/94 HQ case
open re Continued
502
1 sent as Original
7/18/94

Airtel from Director, FBI to SAC, San Francisco
Re: Elmer Pratt, aka "Geronimo";
Inquiry of Gil Garcetti,
Los Angeles County District Attorney;
OO: HQ
BUDED: 2/18/94

Pratt. San Francisco is also requested to interview witnesses,
[redacted] to determine the
basis of their allegations.

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San Francisco should SUTEL results to FBIHQ,
Attn: Violent Crimes and Major Offenders Section by COB 2/18/94.

NOTE: This airtel is in response to an inquiry received from
Mr. Gil Garcetti, Los Angeles County District Attorney, directed
to Attorney General Janet Reno, dated 12/1/93. Garcetti
requested that the AG assist him in determining if the FBI
possessed any information which would impact on the innocence or
guilt of Elmer "Geronimo" Pratt. The airtel requests that SF
review appropriate files, contact witnesses and report the
results to FBIHQ for inclusion in a response to the AG.

Pratt was convicted of a 12/18/68 murder and shooting
at Santa Monica, California. Pratt was a member of the Black
Panther Party. Garcetti has received copies of depositions from
two individuals who participated in a court-ordered review of FBI
documents in the case of the [redacted]
In these depositions, taken in April 1991, the two witnesses
alleged that they reviewed "FBI wire tap logs" [redacted]

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FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☒ AIRTEL

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 2/22/94

431

TO : DIRECTOR, FBI
 (ATTN: [REDACTED] UNIT CHIEF,
 CID, VIOLENT CRIMES UNIT,
 ROOM 5042)

FROM : SAC, SAN FRANCISCO (197-39)

SUBJECT : ¹¹¹ELMER PRATT, aka
 "Geronimo"
 INQUIRY OF GIL GARCETTI,
 LOS ANGELES COUNTY DISTRICT ATTORNEY
 OO: FBIHQ

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 b7C

Re San Francisco airtel to FBIHQ dated 2/16/94.
 FBIHQ airtel to San Francisco dated 2/7/94.

Enclosed are two (2) copies each of two FD-302s
 reflecting interviews of [REDACTED]
 [REDACTED]

As is indicated in the [REDACTED] interview, it is
 her belief that the [REDACTED] wiretap log entry she claims to
 have seen originated with a call from [REDACTED]
 [REDACTED]

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② - Bureau (Encls. 4)
 1 - San Francisco
 JDLW/pkv
 (3)

#94-517
 ALL INFORMATION CONTAINED
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 DATE 9/6/94 BY SP12/bce

62A-HQ-107377-2

CC: VCU

Approved: _____ Transmitted _____ Per _____
 (Number) (Time)

SF 197-39
JDLW/pkv

for court-authorized centralized review in the San Francisco
FBI office.

It should also be noted that:

1) San Francisco file [] has no missing serials, has no
other references as to GERONIMO (PRATT), and was closed on
3/13/69.

2) Pursuant to a [] Attorney General authorization,
San Francisco initiated telephonic electronic surveillance
[]

3) The [] address is separate and apart from
[]

[] A search of San Francisco indices
concerning that address, as well as the phone number
attributed to it for that time span, 654-8332, came back
negative as to any ELSUR.

As previously indicated, it is San Francisco's
position that the wiretap log entry at issue, [] on
[] does not exist in San Francisco files.

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JUL 18 1988

Honorable David E. Skaggs
Member of Congress
Suite 130
9101 Harlan Street
Westminster, Colorado 80030

SSP

CLASS

SRC'D

SER

REC

Dear Congressman Skaggs:

U.S. Department of Justice - Federal Bureau of Investigation

I have received your May 23rd communication on behalf of several of your constituents who have written concerning Mr. Elmer "Geronimo" Pratt.

The form communication you enclosed signed by [redacted] expresses the belief that Mr. Pratt was unjustly convicted and imprisoned and that he is denied justice in the courts because of his political beliefs. You have requested me to respond to the issues raised.

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Mr. Pratt, a former member of the Black Panther Party, was convicted in the Superior Court of Los Angeles, California, on July 28, 1972, for murder. The charges resulted from a December 18, 1968, robbery in Los Angeles, at which time two victims were shot resulting in the death of one. Mr. Pratt's murder indictment had been returned on December 4, 1970, in Los Angeles County. His conviction has been reviewed by the California Court of Appeals and in a majority opinion filed on December 3, 1980, Mr. Pratt's application for a writ of habeas corpus was denied. In addressing Mr. Pratt's contention that the FBI has conspired with local law enforcement authorities to "frame" him by illegally manufacturing, manipulating and withholding evidence, the Court, after reviewing the entire record, ruled that Mr. Pratt's contentions were "based on rank speculation and sheer conjecture which does not justify the relief sought." By a vote of four to one, the California Supreme Court declined to hear the matter. Mr. Pratt's petition for habeas corpus relief was dismissed by the United States District Court, Central District of California, on August 12, 1986, and his appeal is currently pending before the 9th Circuit Court of Appeals.

17 AUG 30 1988

[redacted] communication also mentions COINTELPRO and states that, through this program, the FBI had abused the criminal justice system in several cases, including the case of Mr. Pratt. Because of similar charges, then FBI Director William H. Webster formed a special task force to review our files. This task force found no evidence that any of the COINTELPRO proposals involving Mr. Pratt had any impact on Mr. Pratt's murder trial. Further, the task force found no evidence that the proposals were designed

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Exec AD Adm. _____
Exec AD Inv. _____
Exec AD LES _____
Asst. Dir. _____
Adm. Serv. _____
Crim. Inv. _____
Ident. _____
Insp. _____
Intell. _____
Lab. _____
Legal Coun. _____
Off. Cong. & Public Affs. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Telephone Rm. _____
Director's Sec'y _____

- 1 - Denver - Enclosures (2)
- 1 - Congressional Affairs Office

SEE NOTE PAGE TWO

#94-517
ALL INFORMATION CONTAINED
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DATE 9/6/94 BY SP5CJ/bu

MAIL ROOM ☐

FBI/DOJ

Honorable David E. Skaggs

to affect the trial. The FBI concluded that the purpose of each proposal was to generate dissension among the various factions of the Black Panther Party. Mr. Pratt, who was a prominent Los Angeles Black Panther Party officer, was mentioned because he was a controversial figure in the party. The findings of this task force were provided to Congressman Don Edwards, Chairman of the Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary, by letter dated January 16, 1981.

Although your constituents' main concern appears to be securing the release of Mr. Pratt, the form letter also alleges FBI impropriety in cases involving [redacted]

[redacted] was tried and convicted by a jury of his peers in the U.S. District Court of South Dakota. The issue of alleged improprieties by the FBI has been thoroughly litigated in the trial and due process proceedings for [redacted] In December, 1986, the United States Court of Appeals for the Eighth Circuit upheld his conviction, and in October 1987, the Supreme Court of the United States refused to grant [redacted] petition for review.

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[redacted] Oglala Lakota American Indian [redacted] has been in the South Dakota Prison since [redacted] where he is serving a life sentence for murder. His conviction was considered by the Seventh Judicial Circuit Court in South Dakota in connection with his post-conviction relief petition. The Court stated there was no articulable basis upon which it could find that the FBI Agents participated in any subornation of perjury or coaching the witness. This decision of July 17, 1979, was upheld by the Supreme Court of the state of South Dakota in an unreported opinion dated May 20, 1981.

I hope this information will assist you in responding to your constituents.

APPROVED:

Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Inspection _____
Intell. _____
Laboratory _____
Legal Coun. _____
Off. of Cong. & Public Affs. _____
Off. of Lia. & Int. Affs. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____

Director _____
Exec. AD-Adm. _____
Exec. AD-Inv. _____
Exec. AD-LES _____

Sincerely yours,

William S. Sessions
Director

NOTE: Congressman David E. Skaggs wrote to Director Sessions on behalf of [redacted] Colorado, who sent him a form letter dated April, 1988, requesting him to cosponsor House Resolution No. 413 introduced by Congressman Dellums. This Resolution calls on Congress to conduct inquiries into the FBI's role in the arrest, conviction and continued imprisonment of ELMER "GERONIMO" PRATT, and urges both the Governor of California and the State Parole Board to take immediate action to secure his release.

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NOTE CONTINUED PAGE THREE

Honorable David E. Skaggs

Bufiles indicate that PRATT, a former member of the Black Panther Party, was convicted in the Superior Court of Los Angeles, California, on 7/28/72 for murder. The charges resulted from the 12/18/68 robbery of [redacted] CAROLINE OLSEN by two males in Los Angeles. After robbing [redacted] of approximately \$35.00, PRATT shot both victims resulting in the death of CAROLINE OLSEN. PRATT's murder indictment was returned on 12/4/70, in Los Angeles County.

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The conviction of ELMER PRATT was reviewed by the California Court of Appeals and in a majority opinion filed on December 3, 1980, Mr. PRATT's application for a writ of habeas corpus was denied. In addressing Mr. PRATT's contention that the FBI had conspired with local law enforcement authorities to "frame" him by illegally manufacturing, manipulating and withholding evidence, the Court, after reviewing the entire record, ruled that Mr. PRATT's contentions were "based on rank speculation and sheer conjecture which does not justify the relief sought." By a vote of four to one, the California Supreme Court declined to hear the matter. This matter is currently pending before the 9th Circuit Court of Appeals.

The form letter provided by [redacted] also states that in 1981, AMNESTY INTERNATIONAL, the London based human rights organization conducted an exhaustive investigation into the FBI's role in the cases of PRATT, [redacted]

[redacted] OGLALA-LAKOTA American Indian Movement
[redacted] He has been in the South Dakota State Prison since [redacted] MARTIN
MONTILEAUX. [redacted] conviction was considered by the Seventh Judicial Circuit Court in South Dakota pursuant to [redacted] post-conviction relief petition. The Court, while noting that the circumstances and the testimony of Special Agents of the FBI caused it some concern, stated there was no articulable basis upon which it could find that the FBI Agents participated in any subornation of perjury or coaching of the witness, [redacted] This decision of July 17, 1979, was upheld by the Supreme Court of the state of South Dakota in an unreported opinion dated May 20, 1981.

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We have previously received inquiries concerning allegations of improprieties by the FBI in connection with the investigation following the murders of 2 FBI Agents on the Pine Ridge Indian Reservation in June 1975. The facts as brought out at trial showed [redacted] murders of Agents Jack Coler and Ronald Williams in 1975. He was tried and convicted by a jury of his peers in the U.S. District Court of South Dakota. His conviction was upheld by the U.S. Court of Appeals for the Eight Circuit in December, 1986. In October, 1987, the Supreme Court for the United States refused to grant [redacted] petition for review. The issue of alleged improprieties by the FBI has been thoroughly litigated in the trial and due process proceedings for [redacted]

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Information in body of letter has been used in connection with other inquiries regarding these individuals.

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 2/22/94

[redacted] was interviewed at the San Jose Resident Agency of the San Francisco Division of the FBI. She was advised as to the identity of both Special Agents and that the topic of the interview was to be declaration she had signed in April of 1991 concerning her review of FBI wiretap records in San Francisco.

[redacted] advised that she currently resides at [redacted] California, [redacted] Her phone number there is [redacted] She moved to that location subsequent to the death of [redacted] friend, CHARLES GARRY, attorney-at-law. It was [redacted] GARRY in San Francisco [redacted] that she became involved in a review of FBI wiretap records.

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[redacted] explained that in the early 1970s there was a lawsuit entitled, Socialist Workers Party (SWP) Vs. Mitchell, filed by an attorney named [redacted] of the Center For Constitutional Rights in New York. [redacted] also handled Black Panther Party (BPP) litigation in New York. Although the suit showed the SWP as plaintiff, a number of other political organizations, including the BPP were also plaintiffs.

Pursuant to discovery orders during the litigation, FBI wiretap logs were reviewed by a LEONARD WINEGLASS, an attorney in Los Angeles. While the initial discovery was undertaken for the original plaintiff, SWP, because there were other plaintiff groups subsequently involved including [redacted] discovery was conducted by plaintiff group or category. During this review by WINEGLASS, he felt there had been a violation of the attorney/

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Investigation on 2/18/94 at San Jose, California. File # 197-39by SA [redacted] 62A-HQ-1073771-2
SA [redacted] /pkv Date dictated 2/18/94b6
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197-39

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Continuation of FD-302 of _____

, On 2/18/94 , Page 2

overheard. Consequently, WINEGLASS urged GARRY, who was then counsel for the BPP in the San Francisco Bay Area, to review the wiretap material. _____ explained that GARRY _____

In order to accomplish the review, _____ first prepared a declaration and sent it to _____ in New York, who then procured a court order authorizing review of FBI wiretap logs in San Francisco. Although not positive, _____ thought that order encompassed wiretap logs effecting _____

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Consequently, she thinks that those logs were shipped from other FBI offices to San Francisco for centralized review.

_____ recalls that she began the review some months prior to 1975 and conducted examinations on approximately 20 separate occasions over a period of time. She conducted the review in FBI office space at 450 Golden Gate Avenue in San Francisco. She was placed in a small room just past the public area, and her activities were monitored by a series of different FBI Agents. At her request, logs would be brought to her by an Agent according to the date or dates she specified. She described the materials reviewed were contained in a legal-size black folder that opened like a book. Inside there were slots within which typed entries had been placed that included the time, date, participants and a synopsis of the conversation. On the upper corner of each entry was some code that had letters, possibly standing for the initials of an FBI office, and numbers.

She recalls that the order authorized her to review _____ wiretap logs, as well as actual tapes if she desired. Although she could not copy or remove any material, she could take notes. During her review she neither reviewed nor saw any tapes. The logs she reviewed were limited to _____ wiretap material. The first entry she recalls viewing was that of _____ and _____ thinks it dealt with a phone call to or from the _____

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Continuation of FD-302 of

, On 2/18/94 , Page 3

She recalls reviewing a log entry dated

Upon reviewing the entry, [redacted] immediately recognized its importance and made notes concerning it. She was positive the call came to [redacted] [redacted] had answered the phone and believes the call to have been made by [redacted] office. She no longer specifically recalls how she knew the call to have come to the [redacted] other than perhaps recognizing the phone number. Based on the content of the call, and the code on the log entry card which she no longer remembers, she believes it to be the product of a wiretap on [redacted]

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Upon seeing the entry she pointed it out to [REDACTED] who was reviewing logs with her on that occasion.

The notes [] took regarding the above log entry should be in the possession of [] a New York attorney [] GARRY's estate [] GARRY's business and all of its files. Following his death, [] advised she had occasion to later review the office file pertaining to PRATT after it was in [] possession. There was nothing in it other than news clippings.

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After the wiretap review [REDACTED]
[REDACTED] She believes GARRY did nothing about it; she presumes because he was closely aligned with HUEY NEWTON and the mainstream of the BPP, both personally and as their attorney. By that time there had been a substantial division in the BPP,

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Continuation of FD-302 of _____

, On 2/18/94 , Page 4

resulting in NEWTON having given an order that all BPP members were not to support PRATT in any way. This order was later expanded to forbid any Party member from attending, assisting or testifying at PRATT's subsequent murder trial. To _____ knowledge, the only person who disobeyed this order and did in fact testify at PRATT's trial was KATHLEEN CLEAVER. _____ feels that it was because of NEWTON's order that none of the

_____ believes this split in the BPP to be substantially the product of the FBI's "COINTEL program", wherein PRATT was portrayed as NEWTON's enemy and as cooperating with the FBI and the police against the BPP. _____ described the FBI's COINTEL activities as involving cartoons, phoney murder threats to NEWTON by PRATT, and NEWTON's legal defence fund being siphoned away by PRATT, GARRY and others while NEWTON was in prison.

_____ thinks she also informed _____ a BPP attorney in Los Angeles, _____ and possibly other individuals as to the discovered wiretap log entry. She noted that there had been massive amounts of discovery during preceding litigation that had already been provided to plaintiffs. Consequently, she assumed PRATT's homicide trial attorney had the information.

_____ the initial SWP litigation, _____, may have copies of the orders authorizing the review of wiretap files in San Francisco.

_____ advised that certain documents that had been produced during discovery indicating that there had been a wiretap on the _____. She also indicated that a _____ (phonetic), retired FBI Agent who cooperated with GARRY in dealing with the BPP litigation, may have knowledge regarding this wire. _____ GARRY's

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Continuation of FD-302 of

[REDACTED]

, On

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office in the understanding of FBI materials released to GARRY
under the Freedom of Information/Privacy Act. [REDACTED] advised
that [REDACTED] pointed out a particular document then under
review and indicated that it was a wiretap of [REDACTED]
[REDACTED]

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- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 2/17/94

[redacted] was contacted and interviewed at his residence/place of business, [redacted] California. His telephone number at that location is [redacted]. He was advised as to the identities of both Special Agents (SA) and that the interview would concern a certain declaration that he had signed in April of 1991 concerning his review of Federal Bureau of Investigation (FBI) wiretap records in San Francisco.

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[redacted] in California, in business for himself since 1976. Prior to that time he was [redacted] in San Francisco. It was while so employed that he came to review FBI wiretap records.

[redacted] explained that in approximately 1975 an attorney in New York, [redacted] of the Center for Constitutional Law, had obtained a court order, presumably from a New York Federal court, that authorized [redacted] to access certain FBI wiretap records. [redacted] cannot recall the underlying litigation, although he assumes it to be Black Panther Party (BPP) related, nor can he recall the terms and conditions of the order or review process, nor if files from any FBI office other than San Francisco were there for review.

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[redacted] advised that attorney CHARLES GARRY (deceased) in San Francisco was requested by [redacted] him in carrying out the review in San Francisco. This was apparently due to GARRY then [redacted] At the time, [redacted]

[redacted] which had done substantial work for both GARRY and [redacted] in the past. He was requested to accompany [redacted] CHARLES GARRY's office to the Federal

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Investigation on 2/17/94 at San Francisco, Calif. File # 197-39

by SA [redacted] and SA [redacted] /pkv Date dictated 2/17/94

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Continuation of FD-302 of _____

, On 2/17/94 , Page 2

Building in San Francisco at 450 Golden Gate Avenue in order to carry out the court-ordered review of FBI wiretap files.

_____, as well as a former employee of KUNTSLER in New York. _____ speculated that he was chosen for the review because he possessed in-depth personal knowledge of the _____ since he had done substantial work for many _____

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_____ advised that he and _____ were seated in a windowless room in the Federal Building. He cannot recall if it was within FBI space. Two FBI Agents monitored their activities during the review. When _____ requested files concerning specific date frames, the Agents periodically supplied them with "files bound similar to a book". _____ described the documents contained in the files that they reviewed as wiretap logs or log entries that were individual blocks of information contained on single sheets of paper. Each entry indicated a time, date and the participants. His recollection is unclear as to whether the content of conversations were included.

_____ recalled that this review process took several days' time, and was limited in scope to wiretap logs. During the review _____ described in his April 1991, declaration and showed it to _____. _____ had an immediate understanding of the significance of the time, date, participants and location due to his substantial personal knowledge of events concerning the _____. When asked during this interview to describe the entry, he advised that it was just as he had described in his declaration. He does recall the overhear location as the _____ based on information he then knew, but no longer recalls.

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_____ stated that he remembered the act of viewing the log entry quite well and held it clearly in his memory until he made his sworn declaration in 1991, because of its importance. Since making that declaration, however, he has allowed his memory

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Continuation of FD-302 of _____

, On 2/17/94 , Page 3

of the event to lapse and has no clear and independent recollection of the event other than statements made in his sworn declaration.

Sometime subsequent to this review, _____ told GARRY of the discovery of the above-described log entry. He later gave that same information to an attorney, _____ who has in the past represented PRATT. Thereafter, he took no further action on the issue until much later, when he was approached by _____ an attorney. That resulted in his April, 1991, declaration.

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During the intervening years, _____ assumed that the log entry was common knowledge and did not understand why _____ He was quite surprised to subsequently learn that such was not the case. Since GARRY _____ the results of the court-authorized review conducted by _____ should have been communicated by GARRY to _____

_____ thinks that he made notes concerning his review in general, but does not specifically recall taking any notes regarding the entry concerning _____. He assumes that any such notes, as well as other background information, i.e., background litigation, court order, etc., would be located in _____ case file. _____ has no recollection as to who paid for _____ services.

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section, contending that the section excluded "offenses which carry life or death punishment." The court commented "I think, Mr. Cochran [one of defendant's attorneys], that the court's hands are pretty well tied as far as sentence is concerned in this matter."

In *People v. Anderson* (1972) 6 Cal.3d 628 [100 Cal.Rptr. 152, 493 P.2d 880], our Supreme Court earlier that year, on February 18, 1972, had decided that California's death penalty statute was unconstitutional under California's Constitution. It appears from the Penal Code that first degree murder is also punishable by life imprisonment (Pen. Code, § 190). There is parole eligibility after seven years (Pen. Code, § 3046), but use of a firearm (Pen. Code, § 12022.5) adds another five years' minimum to the seven years just mentioned. Accordingly, if the trial court had seen fit to fix a cumulative minimum term of six months, as allowed by Penal Code section 1202b, defendant could have benefited from it.

The trial court did not expressly state that its hands were tied because of the wording of the code section, although that may be inferred. While, under the evidence as established by the verdicts in this case, we find it difficult to conceive that any trial judge would exercise the discretion granted by this code section, we cannot substitute ourselves into the trial judge's robes.

The judgment of conviction is affirmed; as to the sentencing, the case is reversed and remanded, the trial court being directed to resentence defendant giving due consideration to the prerogative given to it by Penal Code section 1202b.

NOT FOR PUBLICATION

Jefferson (Bernard), Acting P. J., and Kingsley, concurred.

APPENDIX C

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

March 10, 1980

Honorable Paul N. McCloskey, Jr.
House of Representatives
Washington, D. C. 20515

Dear Congressman McCloskey:

At our meeting on January 23, 1980, you asked for copies of certain documents. In addition, you requested permission to inspect all FBI files reviewed by our Pratt Task Force, and to interview certain current and former Bureau employees. Finally, you asked us to prepare a summary of the January 23 briefing. This letter responds to your requests.

[Dec. 1980]

94-517
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DATE 9/6/94 BY SP5K/bm

First, you asked for the following documents:

- * the portion of the Pratt trial transcript setting forth Butler's denial that he worked for FBI;
- * portions of FBI manuals setting forth the operative definitions of probationary racial extremist informant during 1969-1972;
- * the quotation from the January 23, 1971, article in the Black Panther Party (BPP) Magazine that was read to you during our meeting (we do not have copies of the magazine); and
- * the FD-302 report on the August 19, 1969, interview of Dwaine [sic] Rice by FBI Agents.

I have enclosed all of these documents, except for the FD-302 report on Dwaine [sic] Rice. Since the release of that document may violate Mr. Rice's rights under the Privacy Act, we cannot furnish it to you at this time. We have reviewed the document, however, and it does not support Mr. Rice's allegations.

Next, you asked for authority to inspect all of the files that were reviewed by our Task Force (thousands of pages, located at Headquarters and the Los Angeles and San Francisco Field Offices), and to interview all current and former Agents who were involved in the Pratt case or the counterintelligence program (COINTELPRO). Although I appreciate your interest, long-standing Department of Justice policy precludes consideration of such broad requests unless they are the result of formal Committee action.

Finally, in response to your request, I asked the members of our special Pratt Task Force to prepare a written synopsis of the material disclosed to you in the January 23 briefing. I have enclosed a copy of that synopsis.

Sincerely,

/s/ William H. Webster
Director

Enclosures (4)

- 1 - Honorable Don Edwards (Enclosures 4)
- 1 - Honorable Richardson Preyer (Enclosures 4)
- 1 - Counsel (Enclosures 4)
Office of Professional Responsibility
- 1 - Assistant Attorney General (Enclosures 4)
Office of Legislative Affairs
- 1 - Assistant Attorney General (Enclosures 4)
Criminal Division

[Dec. 1980]

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

SYNOPSIS OF PRATT INQUIRY

History of Task Force

On April 6, 1979, Congressman McCloskey wrote to the Director expressing an interest in the case of Elmer "Geronimo" Pratt, a former BPP member who was convicted of a 1968 murder. His letter asked the Director to "institute an internal FBI investigation of the Pratt case to determine whether there is any evidence in the files to indicate the possibility of Pratt's innocence or doubt as to Pratt's guilt?"

Pursuant to Congressman McCloskey's request, a search for records was conducted at FBIHQ, Washington, D. C., and at the Los Angeles and San Francisco Field Offices. The search followed regular FBI searching procedures, which rely to a very large extent on a card index. The records retrieved by this search and information received from certain Special Agents, constituted the factual basis upon which a July 12, 1979, letter to Congressman McCloskey was prepared. This letter was a good-faith effort to respond to his inquiry based upon the information received as a result of our normal retrieval process.

In a letter dated September 21, 1979, Congressman McCloskey expressed dissatisfaction with the July 12, 1979, letter.¹ The Director met with him on September 26, and agreed to take a new look at the impact of COINTELPRO (the counter-intelligence program) on the Pratt case. Accordingly, the Director ordered the formation of a special Task Force.

Task Force Methodology

The Task Force reviewed all FBIHQ files relating to Elmer Pratt and his known associates to determine if the FBI had any information concerning Pratt's trial and conviction for the "Tennis Court Murder" that should have been made available to the court. This file review far exceeded normal file review procedures. Ordinarily, as in the initial Pratt inquiry, a search covers only indexed references. Here, however, the Task Force reviewed, page-by-page, line-by-line, all files that may have contained relevant information, even if there were no indexed references to Pratt. A similar file review was conducted by the Task Force at the San Francisco and Los Angeles Field Offices. In addition, the Task Force reviewed the Los Angeles County prosecutor's files and the trial transcript in the Pratt case.

Events Leading to Conviction

On December 18, 1968, Dr. Kenneth Olson and his wife Caroline were robbed and shot on a Santa Monica, California, tennis court. Caroline Olson died as a result of the wounds she received.

¹The FBI released thousands of pages of documents to Pratt as a result of a Freedom of Information Act request he filed in 1976. Congressman McCloskey's dissatisfaction is apparently based on his reading of some of those documents.

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In January of 1969, Alprentice Carter and John Huggins, members of the BPP, were shot and killed while attending a meeting of the Black Student Union at the UCLA campus. Afterwards, members of the BPP congregated at John Huggins' house. The Los Angeles Police Department (LAPD) conducted a search of the Huggins' home and found numerous weapons and explosives. As a result, the LAPD arrested many of the persons found inside the house (including Pratt) and interviewed many others who had been congregated outside (including Butler).

In view of the mandate from the Attorney General to the FBI to "use the maximum resources" in the investigation of civil disorders,² the Los Angeles Office of the FBI opened a substantive investigation on each of the individuals present at the Huggins' house. As was the standard procedure in this type of case, the Field Office investigated each subject's background and then secured Bureau (FBIHQ) authority to interview him. In April of 1969, Pratt was interviewed. He was uncooperative and denied any BPP affiliation.

In August of 1969, FBIHQ authorized an interview of Julius Butler. After being advised of his rights and refusing to sign a waiver of those rights, he was interviewed. Butler stated the reasons for his resignation from the BPP. He further stated that on resigning from the BPP, "Geronimo" Pratt threatened him, telling him that his (Butler's) life was in danger. Butler said he hung up the phone on Pratt and was not afraid because he (Butler) had written a letter that would put certain members of the BPP "in the gas chamber." He said the letter was in the hands of an unnamed friend of his. The Los Angeles FBI determined Butler had a friend named Dwaine [sic] Rice, a Community Relations Officer for the LAPD, who had received an envelope from Butler containing a letter to be opened in the event of Butler's death. Agents of our Los Angeles Division interviewed Rice in August of 1969. He admitted he had the letter but did not turn it over to the FBI. The FBI did not receive a copy of the letter until November 1970, when the LAPD opened it and sent a copy to our Los Angeles Field Office.

Pratt became the subject of an FBI Unlawful Flight to Avoid Prosecution investigation in September of 1970, because of his failure to appear in local court on charges stemming from a BPP shootout with the LAPD on December 8, 1969.

On December 4, 1970, a local sealed indictment was returned at Los Angeles, California, charging Pratt with the "Tennis Court Murder." This indictment was apparently based on Butler's letter and additional investigation.

Pratt was arrested by FBI Agents in Dallas, Texas, on December 8, 1970, on the Unlawful Flight to Avoid Prosecution charge.

Pratt's conviction for the "Tennis Court Murder" was apparently based on the following evidence:

- * The victim's husband, Dr. Olson, who was shot during the robbery, identified Pratt as the murderer.
- * A shopkeeper testified that Pratt was in the vicinity of the tennis courts where the murder occurred, at the time of the murder, with a gun.

²Memorandum from Attorney General to the FBI Director September 14, 1967, quoted in Select Committee to Study Governmental Operations, *Final Report, Book III: Supplementary Detailed Staff Report on Intelligence Activities and the Rights of Americans*, S.Rep. 94-755, 94th Cong., 2d Sess. 492 (1976) [hereinafter *Church Committee Report*].

- A vehicle fitting the description of Pratt's vehicle, as to make, model, color, and color of out-of-state license plates was seen in the vicinity of the tennis courts at the time of the murder.
- Julius Butler testified that Pratt admitted committing the murder.
- LAPD firearms analysis matched shell casings found at the murder scene with a weapon found near Pratt at the time of his arrest at John Huggins' house in January of 1969.
- The State's identification witnesses said the murderer was clean shaven. The defense contended that at the time of the murder Pratt had a beard, and it produced a Polaroid photograph of Pratt with a beard to prove the point. The State countered with an expert from Polaroid who testified that the film in question was not made until six months after the photograph was supposedly taken.

Notification of California Authorities

On November 20, 1979, Pratt filed a writ of habeas corpus in California state court. The Task Force's review of FBI files identified three pieces of information uncovered during the inquiry that are arguably relevant to that petition.

1. Pratt contended that Julius Butler, a primary prosecution witness, was unreliable because he was an FBI informant, and that Pratt was denied a fair trial because the jury was not aware of Butler's relationship with the FBI. The Task Force found documents delineating Butler's connection with the FBI.
2. Pratt asserted that the FBI knew he did not commit the murder because he was under constant FBI surveillance at the time. The Task Force found documents containing information derived from an apparently illegal local wiretap indicating Pratt's whereabouts a few days after (but not on the day of) the murder.
3. The Task Force found indications that an FBI informant(s) may have been present at meetings at which Pratt's attorneys and associates discussed legal defense strategy.

These matters were promptly discussed with the Office of Professional Responsibility and the Criminal Division of the Department of Justice (DOJ). The Department's Office of Professional Responsibility did not consider this a matter for their attention. The Criminal Division advised, after review, that California authorities prosecuting the Pratt matter should be advised of the information recently located by the FBI. Two FBI Agents and a DOJ Attorney traveled to Los Angeles and gave oral briefings on all three issues to Andrea Ordin, United States Attorney, on December 11, 1979; John Van De Kamp, Los Angeles District Attorney, on December 12, 1979; and Michael Nash, Deputy State Attorney General, on December 13, 1979. Each of these briefings was given after the Bureau received assurances that the material disclosed would remain confidential (except for *in camera* disclosures to the California court). The California State Attorney General's Office advised that it was handling Pratt's habeas

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corpus petition, and in view of the new information contained in the FBI briefing, i would need time to decide on a course of action. On December 17, 1979, Michael Nash contacted the FBI and made a formal request for all FBI documents on which the briefing was based; he indicated that the California State Attorney General's Office planned to oppose Pratt's petition despite the new information. Mr. Nash was informed that some of these documents may not be available because they are classified, but that the FBI had no objection to an *in camera* inspection of the documents by the Judge

Subsequently, Mr. Nash was told that certain FBI documents, including forty (40) pages setting forth FBI contacts with Julius Butler, and two (2) pages indicating Pratt's whereabouts in late December, 1968, could be made available to him. In order to protect the identities of any FBI informants, Mr. Nash agreed that a summary concerning the defense camp information would suffice. These documents were provided to Mr. Nash and the California court for review, prior to Pratt's habeas corpus hearing on January 18, 1980. Following the hearing, the court denied Mr. Pratt's petition.

Julius Butler

Both Pratt and Congressman McCloskey maintain that Julius Butler was an FBI informant, that this taints Butler's incriminating testimony, and that Pratt was denied a fair trial because the jury was not aware of Butler's relationship to the FBI. The Task Force determined that for a time Butler was evaluated as a "probationary informant." More important, FBI files establish that the Bureau neither paid nor otherwise compensated Butler for testifying against or providing information about anyone. Butler's letter incriminating Pratt was delivered to Sergeant Rice of the LAPD before Butler had any contact with the FBI, indicating that the FBI had nothing to do with Butler's testimony in the Pratt trial.

Finally, the assertion that Butler was a law enforcement informant is not new. Defense counsel was aware that Butler was a Los Angeles Sheriff's Deputy before 1

There has been some confusion about whether Julius Butler was an FBI informant. This confusion is understandable in light of the contrast between the broad dictionary definition of informant and the precise law enforcement usage of that term. These semantic differences—briefly addressed below—should not divert attention from the primary issue, which is whether Pratt is entitled to a new trial because the jury was unaware that Butler supplied information to the FBI.

Webster's New Collegiate Dictionary (1977) defines "informant" as "one who gives information." Of course, under that broad definition Butler would be considered an informant, for he supplied information to the FBI.

In FBI Manuals, however, "informant" does not merely mean "one who gives information." Rather, "informant" is one of several kinds of person "who gives information to the FBI. The "informant" label refers to reliable persons actively engaged in obtaining and furnishing information to the FBI. Traditionally, "informants" are assigned symbol numbers; ordinarily, they are paid. Butler was not assigned a symbol number, paid, and he was not considered an "informant." The FBI regularly receives, on a confidential basis, information from individuals who are not considered informants.

Bureau documents show that Butler was considered a "probationary (racial) informant." This term refers to a person being cultivated as an informant, but whose reliability and willingness to cooperate are not yet established.

Therefore, while Butler falls within the dictionary definition of informant because he supplied information, he was not an "informant" as it is defined in FBI Manuals. Again, however, this definitional question is not particularly important. The crucial question is whether Pratt was denied a fair trial because the jury was not told that Butler supplied information to the FBI. As noted above, the California court considered Pratt's claim on this issue (in his habeas corpus petition) and rejected it.

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joined the BPP, so at the trial he asked Butler whether he "severed [his] ties...with law enforcement" and whether "since leaving the Sheriff's Department [he] worked for the FBI or the CIA?"⁴ Butler responded that he had severed his ties with the Sheriff's Department, and he denied "working" for the FBI or the CIA. In the new trial motion, defense counsel again raised the issue, contending that Butler was a paid LAPD informant and part of a LAPD conspiracy against Pratt. The motion was denied. And still again, in Pratt's recent habeas corpus petition, defense counsel alleged that Pratt was denied a fair trial because of Butler's role as an informant. After reviewing pertinent FBI documents, the court denied Pratt's petition.

Local Wiretap

Pratt contends he was under FBI surveillance at the time of the murder, and that Bureau records show that he was not at the scene of the crime. Pratt was not under surveillance by the Bureau. However, FBI records include information about Pratt's whereabouts based on an apparently illegal local wiretap. These records indicate that "Geronimo" arrived in Oakland on December 20, 1968, was still there on December 23, and was hiding from someone.⁵ Thus, while FBI records place Pratt in the Oakland area in late December, 1968, they do not establish an alibi for him on December 18, 1968.⁶ ✓

These records were not previously located because they were not indexed to Pratt at FBIHQ. In fact, it appears that at the time the records were made our San Francisco Division was unaware of Pratt's identity as "Geronimo."

Defense Meetings

In the late 1960's and early 1970's, the FBI conducted a substantive investigation of the BPP. As part of this investigation, a number of informants reported on activities of BPP members including Pratt and his close associates. The Task Force discovered that on a few occasions an FBI informant(s) may have been present at meetings in which the following subjects were discussed:

- * Pratt's unhappiness with one of his lawyers;
- * alleged problems with the FBI's arrest of Pratt in Texas;
- * Pratt's interest in finding witnesses who would testify that Butler had a grudge against him;
- * possible approaches to the defense summation in the Pratt trial, and possible strategies in an appeal if Pratt were convicted; and
- * the effectiveness of the testimony of certain trial witnesses.

The significance of this discovery must be placed in perspective. First, the Task Force was unable to determine whether the FBI informant(s) was actually present at these meetings or merely heard about the discussions later. Second, the records indicate that attorneys were actually present at these meetings on only a few occasions. Third,

⁴This quotation is found on the enclosed page of the trial transcript.

⁵These records also indicate that on the evening of December 18, 1968, "Bobby Seale" stated he was going to pick up some people, including Kathleen and go to "a private residence."

⁶The travel time between Los Angeles and Oakland is only a few hours.

and most important, while a number of reports refer to meetings at which strategy was discussed, the reports do not—with one exception—elaborate on the nature of the strategy. The reports merely state that the topic of defense strategy was discussed. The one exception is the report that Pratt wanted witnesses to testify that Butler had a grudge against him, and in that case, there is no reason to believe that the report was based on a meeting involving an attorney. Finally, there is no indication in the records that the Bureau disseminated any of this information (to the local prosecutors or otherwise) until the December, 1979, briefings of California authorities.

Because these findings suggested the possibility that FBI informants may have been involved in meetings at which defense strategy was discussed, however, the Bureau immediately notified the Department of Justice and appropriate California authorities.⁷ The California authorities, in turn, notified the court hearing Pratt's habeas corpus petition. The court, after reviewing this information, rejected Pratt's petition.

COINTELPRO

Pratt's attorneys assert that "Pratt was a target and a victim of the FBI's counterintelligence program,"⁸ and that as a result of COINTELPRO, he was denied a fair trial. The Task Force found no evidence of any COINTELPRO action designed to influence Pratt's trial. Nor is there any evidence—Pratt's attorneys' cited none—establishing that the Bureau framed Pratt or anyone else.⁹ Instead, Pratt's attorneys argue that the Bureau's attempt to alienate Pratt from other BPP members¹⁰ (as part of a general effort to "foment mistrust and suspicion among the current and past membership"¹¹) "directly led to the loss of witnesses at his trial."¹² Pratt's attorneys are unable to produce any witnesses who were dissuaded from testifying, however, and their contention is belied by the trial transcript, which establishes that BPP members and leaders testified in behalf of Pratt. In any event, this wholly speculative contention was presented to the California court that denied Pratt's petition for habeas corpus.

Miscellaneous

1. A typed June 2, 1969, report on Pratt's efforts at a meeting to encourage BPP members to retaliate against "US" contains the handwritten notation "Julius" at the top of the page. This led Congressman McCloskey to the mistaken conclusion that Julius Butler was the source of the information. The meeting referred to was held at Julius Butler's residence in early 1969, and his name was marked on the page for indexing purposes. But Julius Butler was *not* the source of the information contained in the report.

2. Johnnie Cochran, Pratt's former defense attorney, and now an Assistant District Attorney for Los Angeles County, has represented that he believes Pratt is innocent of the "tennis court" murder. Mr. Cochran's views, however, are diametrically opposed to the official opinion of the Los Angeles County District Attorney's Office. District At-

⁷Letter, Acting Director to California Attorney General, January 16, 1980.

⁸Petition for Habeas Corpus, 46.

⁹The Church Committee Report describes the DOJ's "Special Review Committee" assigned to notify COINTELPRO victims who were harmed. *Church Committee Report*, 76, cited at fn. 2, *supra*. DOJ advised the Task Force that it did *not* notify Pratt.

¹⁰See, e.g., Airtel, LA to Director 2 (January 28, 1970); LA Report on Pratt, cover page C (June 26, 1970).

¹¹Airtel, LA to Director, January 28, 1970, quoted at *Id.* 47.

¹²Petition for Habeas Corpus, 49.

torney John Van De Kamp stated in a December 21, 1978, letter to the State of California Community Release Board (responding to Cochran's letter):

It is disconcerting to me that apparently competent professionals are considering the possibility of Mr. Pratt's innocence... unless they possess information not furnished to me, this office, or the Marin County Deputy District Attorney assigned to Mr. Pratt's hearing.

In closing, I wish to make it clear that this office does not concur in Mr. Cochran's personal views in this matter. On the contrary, we are of the firm belief that Mr. Pratt should not be released.

Task Force Conclusions

The Task Force did not uncover any information that tends to exculpate Pratt of the 1968 "Tennis Court Murder." It found no indication that the FBI had Pratt under surveillance on December 18, 1968, the day of the murder. Nor did it find any information supporting Pratt's alibi that he was not in Los Angeles at the time of the murder. Finally, it found no evidence to corroborate Pratt's argument that his trial and conviction were the result of COINTELPRO.

APPENDIX D

Not to Be Published

[Crim. No. 21638, Second Dist., Div. One, Apr. 22, 1974.]

THE PEOPLE, Plaintiff and Respondent, v. (Super. Ct. Nos. A-253348
consolidated with A-253349
and A-254028)
ELMER G. PRATT and WILLIE STAFFORD, Defendants and Appellants.

APPEALS from judgments of the Superior Court of Los Angeles County. George M. Dell, Judge. Affirmed.

Marvin Zinman, under appointment by the Court of Appeal, for Appellant Elmer G. Pratt.

Albert D. Silverman, under appointment by the Court of Appeal, for Appellant Willie Stafford.

Evelle J. Younger, Attorney General, Edward A. Hinz, Jr., Chief Assistant Attorney General, William E. James, Assistant Attorney General, Norman H. Sokolow and Howard J. Schwab, Deputy Attorneys General, for Respondent.

OPINION

LILLIE, Acting P. J.—Following a protracted trial a jury found Pratt guilty of conspiracy to violate Penal Code sections 12220 (possession of machine gun), 12303

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[Crim. No. 26360. Second Dist., Div. One, Dec. 2, 1975.]

In re JACK KIRSCHKE on Habeas Corpus.

SUMMARY

The Court of Appeal denied the petition of defendant, convicted of the first degree murder of his wife and her lover, for writs of habeas corpus and *coram vobis*. Rejecting defendant's contention that the conviction was the product of false testimony of a prosecution criminalist who, at trial, supplied damaging expert testimony on ballistics, acoustics, and anatomy, the court held that, though the witness negligently presented false demonstrative evidence in support of his ballistics testimony, defendant had ample opportunity to rebut such evidence at trial, and that, though the acoustical testimony was false and the witness' testimony on qualifications as an expert on anatomy was also false and bordered on the perjurious, the opinion evidence given by him dealing with acoustics and anatomy pertained to essentially irrelevant matter and beyond a reasonable doubt could not have affected the outcome of the trial. In further holding that "newly discovered evidence" relied on by defendant, consisting of his own self-serving statement, did not warrant vacation of the judgment, the court pointed out that his failure to assert the matter in the statement at trial was unexplained, and that the statement did not point unerringly to innocence. In rejecting defendant's contention of ineffective representation in that trial counsel failed to investigate and develop the falsity of the evidence used by the prosecution expert, the court held that it was a matter of speculation only whether it was trial counsel error or trial counsel tactics that resulted in defendant's attorney not calling a defense ballistics expert as a witness. (Opinion by Thompson, J., with Wood, P. J. and Lillie, J., concurring.)

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HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1a-1c) Habeas Corpus § 34—Hearing—Presentation of False Evidence at Criminal Trial.—False demonstrative evidence presented by a prosecution criminalist in support of his identification of a weapon possessed by defendant as a murder weapon did not support defendant's collateral attack upon a first degree murder judgment against him, where defendant failed to establish that the expert's error in preparing enlarged comparison photographs was anything other than an honest mistake, where the test and murder bullets were available to defendant and his ballistics expert throughout the trial and were previously made available on a discovery motion, and where, for reasons of his own, defendant's trial counsel did not elect to call the defense ballistics expert as a witness.

[See Cal.Jur.3d, Criminal Law, §§ 1513, 1517; Am.Jur.2d, Habeas Corpus, § 62.]

(2) Habeas Corpus § 14—Grounds for Relief—Unlawful Detention—Evidentiary Error—Perjured Testimony.—A judgment of conviction based on testimony known by representatives of the state to be perjured deprives the defendant of due process of law and may be attacked on habeas corpus. In making such an attack, however, the defendant must establish by a preponderance of the evidence that perjured testimony was adduced at trial, and an honest error in expert opinion is not perjury even though further diligence and study might have revealed the error.

(3) Habeas Corpus § 14—Grounds for Relief—Unlawful Detention—Negligent Presentation of False Evidence.—Negligent presentation of false prosecution evidence is a basis for attacking a criminal conviction on habeas corpus, but only if it results in a denial of a fair trial. Unless the negligence has obstructed the defendant in challenging the case against him, it is not a ground for collateral attack.

(4a, 4b) Habeas Corpus § 14—Grounds for Relief—Unlawful Detention—Negligent Presentation of False Evidence.—In a habeas corpus proceeding, defendant could not successfully challenge his conviction

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tion of the first degree murder of his wife and her lover on the basis of the receipt in evidence of negligently false expert testimony on the acoustics of weapon silencers and on anatomical matters, even though the expert's testimony of his educational qualifications bordered on perjury and was, at least, given with a reckless disregard for the truth, where, before such testimony was offered, the prosecution had made its very strong, though circumstantial, case by establishing defendant's motive, his resentment of the notoriety of his wife's affair, his opportunity, his false alibi, and his possession of the murder weapon.

- (5) Habeas Corpus § 14—Grounds for Relief—Unlawful Detention—Evidentiary Error—Perjured Testimony.—False, or even perjurious prosecution testimony is an adequate ground for collateral attack on habeas corpus only when it may have affected the outcome of the trial.
- (6a. 6b) Criminal Law § 489—Amendment or Vacation of Judgment—Coram Vobis.—Defendant, convicted of the first degree murder of his wife and her lover, failed to establish that he was entitled to a writ of *coram vobis* on the basis of "newly discovered evidence," where the only basis for such relief, aside from matters found insufficient to support relief in habeas corpus, was his own self-serving statement at a State Bar hearing in which he had attempted to rehabilitate his alibi defense concerning his parking of his car at the city airport at a critical time, where he failed to explain why he did not assert the matter in the statement, which concerned a fact known only to him, at his criminal trial, and where such statement did not point unerringly to his innocence.
- (7) Criminal Law § 489—Amendment or Vacation of Judgment—Coram Vobis.—The writ of *coram vobis* will be granted on the basis of newly discovered evidence only if a defendant can show that some fact existed which, without any fault or negligence on his part, was not presented to the court at his criminal trial, or if he shows new evidence which points unerringly to his innocence.
- (8) Criminal Law § 116—Rights of Accused—Competence of Defense Counsel—Failure to Attack Credibility of Prosecution Witnesses.—Defendant, convicted of the first degree murder of his wife and her lover, could not successfully assert ineffective representation by his lawyer at trial on the basis of counsel's alleged failure to

investigate and develop the falsity of demonstrative evidence used by a prosecution ballistics expert to explain his testimony, where he failed to establish as a demonstrable reality rather than speculation that it was trial counsel error and not trial counsel tactics that prevented his calling a defense ballistics expert as a witness.

COUNSEL

Roger S. Hanson, Griffith D. Thomas, George T. Davis and Joseph C. Morehead for Petitioner.

Evelle J. Younger, Attorney General, Jack R. Winkler, Chief Assistant Attorney General, Edward P. O'Brien, Assistant Attorney General, and Clifford K. Thompson, Jr., Deputy Attorney General, for Respondent.

OPINION

THOMPSON, J.—A jury found petitioner Jack Kirschke guilty of two counts of murder for the killing of his wife and her lover and found the murder to be of the first degree. We affirmed the resulting judgment of conviction in an unpublished opinion (Crim. No. 16044) and the judgment became final upon denial of Kirschke's petition for hearing to the Supreme Court. In these collateral attacks upon the judgment, Kirschke asserts that it should be vacated for error of constitutional dimension which denied him a fair trial. He contends: (1) the conviction is the product of false testimony of De Wayne A. Wolfer, a criminalist employed by the Los Angeles Police Department, who, at trial, supplied damaging expert testimony on ballistics, acoustics, and anatomy; (2) Kirschke was ineffectively represented by trial counsel; (3) newly discovered evidence refutes prosecution evidence at trial which undermined Kirschke's attempt to establish an alibi and otherwise points to his innocence; (4) various issues decided against him on appeal were wrongly decided; and (5) various other issues which could have been raised on appeal, but which were not, compel vacation of the judgment.

(We conclude that while Wolfer negligently presented false demonstrative evidence in support of his ballistics testimony, Kirschke had ample opportunity to rebut the demonstrative evidence at trial so that the

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negligently false evidence is not a basis for collateral attack. (*In re Manchester*, 33 Cal.2d 740, 742 [204 P.2d 881]; *In re Waltreus*, 62 Cal.2d 218, 221 [42 Cal.Rptr. 9, 397 P.2d 1001], cert. den., 382 U.S. 853 [15 L.Ed.2d 92, 86 S.Ct. 103].) We conclude further that while Wolfer's acoustical testimony was false and while his testimony on qualifications as an expert on anatomy was also false and borders on the perjurious, the opinion evidence given by Wolfer dealing with acoustics and anatomy pertained to essentially irrelevant matter and beyond a reasonable doubt could not have affected the outcome of the trial. Finally, we conclude there is no showing of ineffectiveness of trial counsel as a demonstrable reality (*People v. Reeves*, 64 Cal.2d 766, 774 [51 Cal.Rptr. 691, 415 P.2d 35]), that Kirschke has not shown any newly discovered evidence, and that he is barred from raising on collateral attack issues that were decided or could, if raised, have been decided on appeal. (*In re Shipp*, 62 Cal.2d 547, 552 [43 Cal.Rptr. 3, 399 P.2d 571], cert. den., 382 U.S. 1012 [15 L.Ed.2d 528, 86 S.Ct. 623].) Accordingly, we deny the relief sought by petitioner.

Testimony at Trial

In essence, the evidence at trial established Kirschke's motive and opportunity to kill. The victims were Kirschke's wife and her lover, killed on the Kirschke bed while apparently engaged in sexual activity. Kirschke had shown great, although private, resentment at the notorious nature of his wife's affair because of its potential to frustrate his efforts to secure a judicial appointment from a newly elected governor whom he had vigorously supported. An exculpatory statement of Kirschke to investigators of the crime in which he attempted to establish an alibi was proved false. Kirschke attempted to show his presence at the Los Angeles airport at a critical time by oral reference to a parking receipt containing a time stamp. Investigation showed that the receipt could not have been issued at the time stated by Kirschke.

The circumstantial weight of motive and opportunity was buttressed by evidence of the murder weapon. The victims were killed by shots from a .38 caliber gun. A revolver of that caliber had been released to Kirschke after he, as a deputy district attorney, had successfully prosecuted a defendant who had used it in a crime. Kirschke admitted that the revolver was kept loaded in a bed table next to the murder bed. While the revolver was missing after the murder and was never found, cash and other small items of considerable value in plain sight in the bedroom remained after the killings. A statement by Kirschke to his

secretary after the murders indicated his desire to suppress evidence that the revolver existed.

*Wolfer's
ballistic
evidence*

The .38 caliber revolver released to Kirschke had, in the past, been subjected to ballistic examination and test bullets had been fired from it. De Wayne Wolfer, a criminalist employed by the Los Angeles Police Department having qualified as an expert in ballistics, expressed his opinion that the earlier test bullets so matched the murder slugs that the .38 caliber revolver and no other in the world was the murder weapon. Wolfer illustrated his opinion by enlarged photographs of the test and murder bullets. While Kirschke had employed his own ballistics expert who examined the test and murder bullets at length and who was present at counsel table while Wolfer was questioned on direct and cross-examination, no question was raised by Kirschke at trial concerning the validity of the photographs. The defense expert on ballistics did not testify.

A sideshow developed at trial. Postmortem lividity on the body of the male victim indicated that his body had rested on its back on the bed for at least two hours after death, while the body was discovered face down on the floor beside the bed. Bloodstains on a wall indicated that the body had rolled from the bed. The defense hypothesized that the killer had moved the body after death at a time which tended to support Kirschke's alibi although by no means to establish it. To counter the hypothesis, the prosecutor recalled Wolfer, this time qualifying him as an expert in anatomy and acoustics as well as ballistics.

Wolfer's acoustical testimony theorized that the murder weapon may have been silenced with a towel or a lawn mower muffler in a fashion which would have prevented its discharge from being heard so that witness reports of loud noises in the early morning hours may have referred to the falling body rather than gunshots.

Wolfer qualified as an expert on anatomy by reference to his university education. He testified that, as an undergraduate, he had taken a course in human anatomy in which he and another student had dissected a cadaver from top to bottom. Having qualified as an expert, Wolfer expressed his opinion that a shift of body fluids after death could have so altered the center of gravity of the body as to cause it to roll from the bed. To emphasize its theory, and undoubtedly to present a dramatic conclusion to its case, the prosecution conducted an in-court demonstration of the Wolfer theory. The murder bed, round in shape, was brought

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into the courtroom and placed before the jury. A male and female police officer acted the part of the victims of the crime while the path of the murder bullets was traced. The male officer then rolled from his back on the bed, landing face downward beside it.

A jury found Kirschke guilty of two counts of first degree murder. On appeal from the judgment based upon the verdict, we concluded that the prosecution's demonstration was questionable rebuttal but that error, if any, inherent in it was harmless. We considered and rejected 17 other contentions of error and affirmed the conviction.

Hearing on Order to Show Cause

Concurrently with his appeal to this court, Kirschke filed a petition for habeas corpus and *coram vobis* with the Supreme Court. The high court transferred the petition to us and we issued an order to show cause returnable in the Los Angeles Superior Court where the case had been tried. Judge George Dell of that court conducted an extensive evidentiary hearing on the petition and denied the petition.

Pursuant to *In re Hochberg*, 2 Cal.3d 870, 873-874 footnote 2 [87 Cal.Rptr. 681, 471 P.2d 1], we have made our independent examination and appraisal of the evidence taken in the superior court. That independent examination and appraisal leads us to the same factual conclusions drawn by Judge Dell.

Evidence produced at the hearing on the order to show cause established that the enlarged photographs of the test and murder bullets used by Wolfer to demonstrate his opinion that the bullets were fired from the same gun do not do so. The evidence convinces, however, that the error is not deliberate. Wolfer compared the bullets under a microscope, reaching his conclusion of identity of weapon. He interrupted his work and returned later to take the photographs. The error is established as due to the interruption.

Court appointed firearms experts, testifying at the order to show cause, were of the opinion that the .38 caliber revolver released to Kirschke may have been the murder weapon. They were not able to make a positive identification because "fine identifying individual characteristics which are apparent in [the] photographs are now obscured or removed by what appears to be a combination of oxidation and wear."

[Dec. 1975]

Evidence on Wolfer's educational qualifications in anatomy, resting upon his dissection of a cadaver, is conflicting. While Wolfer's "memory may not be correct," the evidence does not establish that he "actually lied about his dissection experience." "It is manifest that Wolfer knew very little about what he was talking about when he explained the shifting of 'body fluids' and undertook to explain the quantum of sound reduction that could be achieved by use of a silencer on a handgun." The evidence, however, falls short of establishing that Wolfer actually lied in expressing his anatomical and acoustical opinion.

The evidence on the order to show cause does not demonstrate that Kirschke's trial counsel was ineffective. Kirschke argued the ineffectiveness from his counsel's asserted failure to have his own examination of the death and test bullets. He did not, however, call trial counsel as a witness.

Ballistics Testimony

(1a) Kirschke argues that the demonstrative evidence in the form of the enlarged photographs of the test and murder bullets is perjurious, requiring that the judgment be overturned. He argues alternatively that if the error in the evidence is negligent or inadvertent rather than perjurious, the judgment must nevertheless be vacated because the negligent or inadvertent use of demonstrative evidence prepared by an agent of the state is the equivalent of the suppression of evidence favorable to the accused within the meaning of *People v. Ruthford*, 14 Cal.3d 399 [121 Cal.Rptr. 261, 534 P.2d 1341], and *In re Ferguson*, 5 Cal.3d 525 [96 Cal.Rptr. 594, 487 P.2d 1234].

(2) "A judgment of conviction based on testimony known by representatives of the state to be perjured deprives the defendant of due process of law . . . and may be attacked on habeas corpus In making such an attack, however, [the] petitioner must establish by a preponderance of the evidence that perjured testimony was adduced at his trial" (*In re Imbler*, 60 Cal.2d 554, 560 [35 Cal.Rptr. 293, 387 P.2d 6], cert. den., 379 U.S. 908 [13 L.Ed.2d 181, 85 S.Ct. 196]) "An honest error in expert opinion is not perjury even though further diligence and study might have revealed the error." (*In re Imbler*, *supra*, 60 Cal.2d at p. 567.) (1b) Here Kirschke failed to establish by a preponderance of the evidence that Wolfer's error in preparation of the enlarged photographs was anything other than an honest mistake.

[Dec. 1975]

(3) Negligent presentation of false prosecution evidence is also a basis for habeas corpus, but only if it results in a denial of a fair trial. "Unless [the] negligence has obstructed the defendant in challenging the case against him, it is not a ground for collateral attack." (*In re Imbler*, supra, 60 Cal.2d at p. 567; see also *In re Manchester*, supra, 33 Cal.2d 740, 742; *In re Walireus*, supra, 62 Cal.2d 218, 221.) (1c) Here the negligence of Wolfer in the preparation of the demonstrative evidence did not obstruct Kirschke's ability to challenge the case against him. The test and murder bullets were available to Kirschke and his expert throughout the trial and were previously made available on a discovery motion. (See *In re Imbler*, supra, 60 Cal.2d at p. 567.) For reasons of his own, Kirschke's trial counsel did not elect to call the defense ballistics expert as a witness.

Kirschke argues that the rule of *Imbler* and related cases has been impliedly overturned by *In re Ferguson*, supra, 5 Cal.3d 525, and *People v. Ruthford*, supra, 14 Cal.3d 399, holding that the suppression by the prosecution of evidence favorable to the accused may deny due process of law whether the failure to disclose the evidence is deliberate, negligent, or inadvertent. *Ferguson* and *Ruthford* are not inconsistent with *Imbler*. Suppression of evidence favorable to a defendant of necessity obstructs the ability of the defense to challenge the prosecution's case. Negligently erroneous testimony of a state agent does not obstruct the defendant's ability to defend where, by discovery or otherwise, he is afforded the means to establish the error in the testimony.

We thus conclude that Wolfer's negligent error in preparing the enlarged photographs used to buttress his opinion testimony does not support Kirschke's collateral attack upon the judgment against him.

Acoustics and Anatomical Testimony

(4a) Kirschke attacks Wolfer's testimony on the acoustics of silencers as perjurally or negligently false and mounts the same offense against Wolfer's opinion of change in a dead body's center of gravity based upon postmortem fluid shift plus Wolfer's testimony on his qualifications to give the opinion.

(Unquestionably, Wolfer's opinion testimony on acoustics and anatomy was negligently false. His testimony of his educational qualifications borders on perjury and is, at least, given with a reckless disregard for the

[Dec. 1975]

truth. (5) False, or even perjurious, prosecution testimony is an adequate ground for collateral attack, however, only when it "may have affected the outcome of the trial." (*In re Imbler*, *supra*, 60 Cal.2d 554, 560.) (4b) Here the acoustical and anatomical testimony could not, beyond a reasonable doubt, have affected the outcome of the trial so that it does not support Kirschke's collateral attack upon the judgment. (See *People v. Ruthford*, *supra*, 14 Cal.3d 399, 408.) The testimony did not concern the heart of the matter. The prosecution's very strong although circumstantial case was made when it established Kirschke's motive, his resentment of the notoriety of his wife's affair, his opportunity, his false alibi, and his possession of the murder weapon. The Wolfer testimony on acoustics and anatomy merely exemplifies prosecution tactical error in overtrying a good case by means not adding to its strength. As indicated in our opinion on appeal (Crim. No. 16044), Kirschke's alibi is far from established if the sounds heard early in the morning hours surrounding the murder are treated as gunshots. The manner in which the body of the male victim fell from the bed after two hours rest upon it similarly adds or detracts nothing from the case. At most, it is an unexplained phenomenon which is virtually irrelevant to Kirschke's guilt or innocence.

Newly Discovered Evidence

(6a) In support of the *coram vobis* aspects of his petition, Kirschke asserts that newly discovered evidence compels vacation of the judgment against him. As best we can distill the 142-page petition, the "newly discovered evidence" asserted by Kirschke is: (1) evidence that Wolfer falsified his educational background; (2) evidence that the ballistic photographs are erroneous; (3) evidence obtained in a deposition in an unrelated case that Wolfer is "fully and absolutely ignorant of literally dozens of basic terms and principles in the fields of mechanics, physics, acoustics and mathematics" and is unable to compute a center of gravity; and (4) Kirschke's own testimony at a State Bar hearing in which he attempted to rehabilitate his alibi by stating that he then remembered that he had parked in a different lot at the Los Angeles airport so that the evidence which destroyed his alibi is no longer pertinent.¹

¹Inferentially by a footnote in a document entitled "Traverse to Response—Supplemental Points and Authorities in Support of Issuance of Order to Show Cause," Kirschke states that a medical expert, who testified at trial that postmortem lividity can become fixed in as little as two hours, testified at the superior court hearing on the writ that the minimum fixation time is six hours. At oral argument, Kirschke's counsel contended that the latter testimony is newly discovered evidence conclusively establishing Kirschke's innocence. The matter of fixation of postmortem lividity was thoroughly explored at trial. Thus, unless the new opinion points "unerringly" to innocence, it is not a basis for

Our discussion of the Wolfer testimony on ballistics, acoustics, and anatomy, concluding that its falsity is not an adequate ground of collateral attack, is equally applicable to Kirschke's contention that, as newly discovered evidence, the falsity requires that the judgment be vacated. What remains is Kirschke's self-serving testimony at the State Bar hearing. (7) The writ of *coram vobis* will be granted on the basis of newly discovered evidence only if the petitioner "can show that some fact existed which, without any fault or negligence on his part, was not presented to the court at the trial on the merits..." (*In re Imbler, supra*, 60 Cal.2d 554, 570), or if he shows new evidence which points "unerringly to [his] innocence." (*In re Branch*, 70 Cal.2d 200, 214-215 [74 Cal.Rptr. 238, 449 P.2d 174].) (6b) Here Kirschke is asserting a fact known only to him. His failure to assert it at trial is unexplained. The self-serving statement does not point unerringly to innocence.

Ineffectiveness of Trial Counsel

(8) Kirschke contends that he was ineffectively represented by his lawyer at trial because his counsel failed to investigate and develop the falsity of the demonstrative evidence used by Wolfer to explain his ballistics testimony. To succeed in that contention, Kirschke must establish ineffectiveness of trial counsel as a demonstrable reality and not by speculation. (*People v. Reeves, supra*, 64 Cal.2d 766, 774.) Here Kirschke can prevail only if we speculate that it was trial counsel error and not trial counsel tactics that prevented his calling a defense ballistics expert as a witness. Since a tactical decision, based upon investigation, is not ineffective representation (*People v. Gardner*, 71 Cal.2d 843, 851 [79 Cal.Rptr. 743, 457 P.2d 575]), Kirschke's contention fails.

Issues That Were Raised or Could Have Been Raised on Appeal

The remainder of Kirschke's petition seeks further review of issues decided adversely to him on appeal or which could have been, but were not, included in the appeal. Those issues are not available on collateral attack. (*In re Shipp, supra*, 62 Cal.2d 547, 552.)

coram vobis relief. (*In re Imbler, supra*, 60 Cal.2d 554, 570; *In re Branch, supra*, 70 Cal.2d 200, 214-215.) Evidence points unerringly to innocence only when it undermines the entire case of the prosecution. (*In re Lindley*, 29 Cal.2d 709, 723-724 [177 P.2d 918]; see also *In re Imbler, supra*, 60 Cal.2d 554, 569.) Here the "newly discovered evidence" does no more than cast doubt upon one item of expert testimony received at trial. Nothing would have impelled Kirschke's acquittal if the evidence at trial were the same as the testimony produced at the hearing on the petition for writ.

[Dec. 1975]

Disposition

The petitions for habeas corpus and *coram vobis* are denied.

Wood, P. J., and Lillie, J., concurred.

A petition for a rehearing was denied December 29, 1975, and petitioner's application for a hearing by the Supreme Court was denied January 28, 1976.

DAVID E. SKAGGS
2ND DISTRICT, COLORADO

1723 LONGWORTH BUILDING
WASHINGTON, DC 20515
(202) 225-2161

9101 HARLAN STREET, SUITE 130
WESTMINSTER, COLORADO 80030
(303) 650-7886



CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

PUBLIC WORKS AND
TRANSPORTATION COMMITTEE

SCIENCE, SPACE, AND
TECHNOLOGY COMMITTEE

SELECT COMMITTEE ON CHILDREN,
YOUTH, AND FAMILIES

SSP.

May 23, 1988

CLASS _____
SRC'D _____
SER _____
REC _____

Confidential - Non-Subversive

The Honorable William S. Sessions
Director
Federal Bureau of Investigation
10th & Pennsylvania Avenues, N.W.
Washington, D.C. 20735

494-517
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 9/6/94 BY 9521/60

Dear Mr. Sessions:

I am writing to you in behalf of constituents who allege that Elmer "Geronimo" Pratt did not receive a fair trial because of Federal Bureau of Investigation interference and misconduct, and who want Congress and the state of California take actions within their power to get Elmer "Geronimo" Pratt released from prison. *RECEIVED*

I have enclosed a copy of one of their letters for your review and would appreciate a response to the points the letter raises. Please direct your response to my Colorado office.

Thank you.
Sincerely yours,

David E. Skaggs
David E. Skaggs

63 C-87670

DES:mms
Enclosure

U.S. GOV. 80 1038

*ack led to
Mr. David E. Skaggs
undated (6-14-88) (retype 6-23-88)
1000 DAD, (retype 7-8-88)*

DS/um

#94-517

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 9/6/94 BY SP5CJ/bce

April, 1988

RECEIVED APR 2 1 1988

The Honorable David E. Skaggs
House Office Building
Washington, DC 20515

Re: H. Res. No. 413

Dear Congressman Skaggs:

I am writing, as one of your constituents, to urge you to co-sponsor House Resolution No. 413 introduced by Congressman Dellums. This Resolution calls on Congress to conduct inquiries into the FBI's role in the arrest, conviction and continued imprisonment of Elmer "Geronimo" Pratt, and urges both the Governor of California and the State Parole Board to take immediate action to secure his release.

In addition, I urge you to do everything in your power to bring about a congressional hearing into COINTELPRO operations which have resulted in the ongoing denial of civil and constitutional rights today of people in this country who were targeted by the FBI for their political activities in the late 60s and early 70s.

I share the belief with thousands of others that Geronimo Pratt was unjustly convicted and imprisoned, and continues to be denied justice in the courts because of his political beliefs. FBI records obtained long after his trial show that Mr. Pratt, as a leader of the Black Panther Party, was a specifically-named target of that agency's secret counterintelligence program (COINTELPRO) which was established to destroy political dissent in this country.

FBI records explicitly show there was a concerted effort on the part of law enforcement agencies to arrest and convict Mr. Pratt. During his trial in 1972, the FBI and the Los Angeles Police Department (LAPD) withheld exculpatory evidence from Mr. Pratt, his attorneys and the jury, denying his fundamental right to a fair trial and effecting a guilty verdict. 60 MINUTES recently revealed in its coverage of Mr. Pratt's case that four of the five jurors interviewed by CBS said they would have found Mr. Pratt NOT GUILTY if the evidence withheld by the FBI and LAPD had been made available to them at the time of the trial.

The courts have repeatedly denied Mr. Pratt's appeal for a new trial, despite evidence of his innocence. The courts' reasoning for denial at every appellate level has been that the outcome of the trial would not have been affected had the exculpatory evidence been presented to the jurors. The disclosure by those four jurors directly contradicts this contention by the courts.

Mr. Pratt's case exemplifies the plight of hundreds of people in this country who were targets of COINTELPRO. The Senate Church Committee, after conducting an investigation into COINTELPRO activities in the 60s and 70s, reported in 1976 that the FBI utilized illegal and unconstitutional tactics in an effort to destroy and discredit what it believed to be dissident groups and individuals. In 1981, Amnesty International, the London-based human rights organization, conducted an exhaustive investigation into the FBI's role in the cases of three U.S. prisoners--Geronimo Pratt, [redacted]

In corroborating the Church Committee's findings, Amnesty International stated that in all three cases the FBI, through its COINTELPRO actions, was guilty of abusing the criminal justice system, and called on the U.S. government to investigate the FBI's counterintelligence operations. Government investigations which could have rectified the gross injustices uncovered and exposed by the Church Committee and Amnesty International have not been forthcoming.

Twelve years ago sufficient evidence existed to enable this country to demonstrate its commitment to justice and to warrant a pardon or retrial for Geronimo Pratt. That well over a decade later Mr. Pratt and others like him are still in prison is an injustice of incredible proportions. It is now up to Congress to do what the courts have failed to do. Therefore, I again urge you and all members of the Committee on the Judiciary to co-sponsor H. Res. 413, and to bring about a congressional investigation to fully expose the civil and constitutional rights violations which continue today, and to finally rectify the flagrant injustices which have kept an innocent man imprisoned for more than 17 years.

Sincerely yours,

b6
b7C

b6
b7C

***** -JOURNAL- ***** DATE MAR-23-1994 ***** TIME 16:28 *****

DATE/TIME - MAR-23 16:21

JOURNAL NO. - 16

COMM.RESULT - OK

PAGES - 10

DURATION - 00:06'28

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Fax to
Los Angeles -ASAP
310-996-3573
Attn: Hand -PLA.
H



FBI FACSIMILE COVERSHEET

CLASSIFICATION

PRECEDENCE

- ☐ Immediate
☐ Priority
☒ Routine

- ☐ Top Secret
☐ Secret
☐ Confidential
☐ Sensitive
☒ Unclassified

Time Transmitted: _____

Sender's Initials: R. D. H.

Number of Pages: _____

To: FBI, Los Angeles
(Name of Office)Date: 3/23/94Facsimile number: 310/996-3573Attn: Hand - PLA
(Name Room Telephone No.)From: FBIHQ, Violent Crimes Unit
(Name of Office)

Subject: Elmer Pratt, aka "Geronimo";
Inquiry of Gil Garcetti, Los Angeles Co. District Attorney;
OO:HQ

Special Handling Instructions: Hand-carry

Originator's Name: _____

Telephone: 202/324-4294Originator's Facsimile Number: 202/324-3089

Approved: _____

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b7C

FBI/DOJ

44-517
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FBI

TRANSMIT VIA:

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PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 3/28/94

TO : DIRECTOR, FBI (63-0)
 CRIMINAL INVESTIGATIVE DIVISION,
 VIOLENT CRIMES UNIT

FROM : SAC, LOS ANGELES (197-0)

SUBJECT : ELMER PRATT, AKA "GERONIMO";
 INQUIRY OF GIL GARCETTI,
 LOS ANGELES COUNTY DISTRICT ATTORNEY;
 OO: HQ

#94-517
 ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 9/6/94 BY 950/bca

b6
 b7C

Reference 3/25/94 telcall from Los Angeles PLA
 to SSA CID, VCU; 2/7/94
 Bureau airtel to San Francisco captioned as above with
 facsimile copy received by Los Angeles on 3/23/94.

Enclosed for FBIHQ, CID, VCU are two copies of each
 of the following documents:

1. 6/9/69 Memorandum from SA [redacted] to
 SAC Los Angeles captioned [redacted]
 [redacted] Los Angeles file 157-3958.
 (Enc.#1)

b3
 b6
 b7C

2. 10/18/68 FD-142 from SAC, Los Angeles to
 Director, FBI, captioned "Recommendation for Installation of
 Technical or Microphone Surveillance." Los Angeles file 157-
 1618; Bufile 157-10305. (Enc.#2)

3. 11/6/69 FD-142 from SAC, Los Angeles to
 Director, FBI, captioned "Justification for Continuation of
 Technical or Microphone Surveillance." Los Angeles file 157-
 1618A; Bufile 105-165706 sub 26. (Enc.#3)

③ Bureau (Enc.3)
 1-Los Angeles
 TSG/tsg

62A-HQ-1073771-3
 62A/HQ 1073771

Treat AS orig.

b6
 b7C

Approved: _____ Transmitted _____ Per _____
 (Number) (Time)

For information of the Bureau, the names of [redacted]

A review of the ELSUR portions of the above Los Angeles files reflects that the Los Angeles Field Office applied for wiretap authority to monitor [redacted]

[redacted] (see Enc.#2). This request appeared to have been granted on [redacted] as evidenced by Los Angeles Field Office's request for renewal of wiretap coverage (see Enc.#3). The files reflected that in the [redacted]

b6
b7C
b3
b7D

Review of ELSUR overheard logs for all of the above Los Angeles files for [redacted] Elmer Pratt, and "Geronimo" reflects no evidence of overhears prior to [redacted]

[redacted] since this was the date of installation.

Review of above Los Angeles files reflects no apparent evidence of ELSUR coverage by another Los Angeles law enforcement authority prior to the above Los Angeles FBI coverage beginning in [redacted] Item 14 of Enc.#2 indicates that the Los Angeles FBI stated it was unaware of any outside agency having made a similar request for wiretap coverage [redacted]

b3

As Enc #1 reflects [redacted]

[redacted]
[redacted] was obtained by Los Angeles FBI. [redacted] information indicates that on [redacted]

b3

Based on the above information and review of relevant Los Angeles files, it is the opinion of Los Angeles that the wiretap log entry at issue, [redacted] does not exist in Los Angeles files.

b3

UNITED STATES GOVERNMENT

Memorandum

TO : SAC, LOS ANGELES (157-3598) (P)

DATE: 6/9/69

FROM : SA

SUBJECT: BLACK PANTHER PARTY -
RM - BPP
OO: Los Angeles

#94-517
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 9/16/00 BY *can/bce*

b6
b7C
b7D

DRP/jem
(11)

Assign Rialto Lead
ME

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FBI-LOS ANGELES	

Murano

62A HQ-1073771-3

LA 157-3598

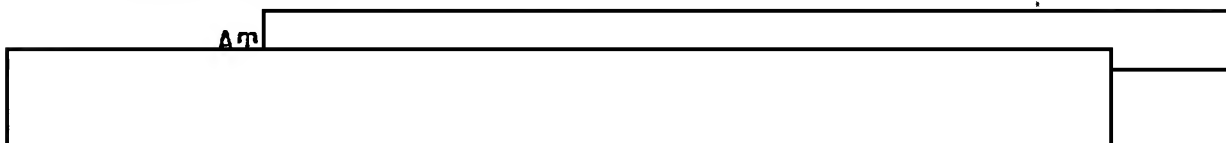


b6
b7C
b7D

LEADS

LOS ANGELES

AT



UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (Bufile 157-10305) DATE: 10/18/68

FROM : SAC, LOS ANGELES (157-1618) (P)

SUBJECT: RECOMMENDATION FOR INSTALLATION OF TECHNICAL OR MICROPHONE SURVEILLANCE

RE: Title [REDACTED]

b3

Character of Case [REDACTED]

Field Office

LOS ANGELES

Symbol Number

Type of Surveillance (Technical or
Microphone):

1. Name and address of person or organization on whom surveillance is to be placed: [REDACTED]

2. A. Address where installation is to be made (set forth exact room number or area to be covered): [REDACTED]

b3
b7E

B. [REDACTED]

3. Previous and other current installations on the same subject:
None.

4. Cost and manpower involved: Annual salary of one Special Employee (\$11,200), 16 hours per day, 7 days per week:
- (1) Two eight-hour shifts per day, five days a week: 2 x 11,200 or \$22,400/yr.
 - (2) Two eight-hour shifts for two days: 2/5 x 11,200 x 2 = \$9,200/yr.
- Total: \$31,600/yr.

5. Adequacy of security: No unusual security problems are anticipated.

1- Bureau (RM)

1- Los Angeles

RHR/gcw

(2)

Registered Mail

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DATE 9/12/94 BY SP5C/ba
able to locate Bureau original.

SEARCHED: —

INDEXED: —

SERIALIZED: 10

FILED: —

62A-110-157-1618-3

6. Type of case involved:

[Redacted]

b3

7. Connection or status of subject in the case:

[Redacted]

[Redacted]

8. Specific information being sought:

[Redacted]

[Redacted]

9. Reasons for believing the specific information will be obtained by the technical surveillance:

[Redacted]

b3

[Redacted]

10. Importance of case and subject:

[Redacted]

[Redacted]

11. Possibilities of obtaining desired information by other means
(Explain in detail):

[Redacted]

b3

12. Risks of detection involved:

[Redacted]

13. Probable length of technical surveillance:

[Redacted]

14. Request made for technical surveillance by any outside agency
(name specific official, title and agency): None known.

b3

15. Remarks:

[Redacted]

16. Recommendation of Assistant Director:

[Redacted]

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI

(Bufile 105-165708)

DATE

11/6/69

sub 26

FROM : SAC, LOS ANGELES (157-1618A)

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 9/6/94 BY SP12/bu

SUBJECT: JUSTIFICATION FOR CONTINUATION OF TECHNICAL OR MICROPHONE SURVEILLANCE

RE: Title

Character of Case

Field Office

Symbol Number

Type of Surveillance: (Technical ~~xx~~~~Microphone~~)

Los Angeles, California

b3

1. Name of person or organization on whom surveillance placed:

2. Address where installation made. Also give exact room number or area covered:

3. Location of monitoring plant:

4. Dates of initial authorization and installation:

5. Previous and other installations on the same subject (with dates and places):
None.

6. If installation is a technical surveillance, answer following questions:

a. Is a trunk line utilized? No

b. Is the surveillance on a switchboard? No

c. Is the surveillance on a public coin-operated telephone? No

1 - Bureau
Registered Mail

b7D

② - Los Angeles

(1 -
rhm/vjh

OFFICE COPY

157-1618A-15

12A-HQ-1073771-3

LA 157-1618A

d. Is surveillance on a private line or a party line? No.

e. If a party line, how many parties?

b3

7. If a microphone surveillance involved, state number of microphones actually used and location of each: N/A

8. Is the installation part of a tel-mike? If so, give symbol of other side of the combination: No.

9. Specific examples of valuable information obtained since previous report with indication of specific value of each item and the date information received. State what use was made of each item involved: (Add insert pages) (see page 2A)

10. Could above information have been obtained from other sources and by other means? No

11. Number of live informants (in field division) who cover same subject:

b3

12. Has security factor changed since installation? No

13. Any request for the surveillance by outside agency (give name, title and agency): No

14. Cost of Plant Premises:

a. Rental costs for plant premises: None

b. Give total number of other surveillances monitored at same plant.
None

- c. If any others, set out the proportionate cost of instant surveillance: N/A

15. Cost of Leased Line for instant installation? Four lines at \$19.75 each, per month - \$79 per month total.

16. Personnel Costs:

a. Give total number of special employees and/or Special Agents working at plant and total salary costs. Four Special Employees at \$11,200 per year: \$44,800 per year
Two Special Agents at \$11,600 23,200 per year
\$68,000 per year

b. Total number of man hours per week spent at plant? 240 men hours per seven-day week.

c. If other installations monitored at same plant, list proportionate number of man hours per week spent on instant surveillance: None

d. If other installations monitored at same plant, list proportionate salary expense per annum for instant surveillance: None

17. Remarks (By SAC): (see page 3A)

18. Recommendation by Assistant Director:

(If this surveillance involves cryptanalysis, include statement that decrypted material is or is not sufficiently important to continue decrypting.)

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☒ AIRTEL

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 6/7/94

TO : DIRECTOR, FBI
 (ATTN: [REDACTED])
 UNIT CHIEF, CID, VIOLENT
 CRIMES UNIT, ROOM 5042)

b6
 b7C

FROM : SAC, SAN FRANCISCO (197-39)

SUBJECT : ELMER PRATT, aka
 "Geronimo"
 INQUIRY OF GIL GARCETTI,
 LOS ANGELES COUNTY
 DISTRICT ATTORNEY
 OO: FBIHQ

#94-517
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 DATE 9/6/94 BY SP5C/bk

Re San Francisco airtels to FBIHQ dated 3/2, 2/22,
 and 2/16 94.

Enclosed for the information of FBIHQ is the
 original and one (1) copy of a letter dated 6/3/94 sent to the
 San Francisco Division from one of PRATT's attorneys [REDACTED]

The contents of the enclosure including Exhibits A
 through F attached thereto buttress [REDACTED]
 position that she and one other had reviewed FBI wiretap logs
 in the San Francisco Division, pursuant to court order
 discovery. The Agents named in the enclosure, [REDACTED]
 [REDACTED] and LEO BRENNEISEN were in fact Agents and were

b6
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- ② - Bureau (Encls. 2)
 1 - San Francisco
 JDLW/pkv
 (3)

SF - PLA
 Can not located any
 Discovery Order or
 Discovery Documents.
 Possible continuation of all
 Calif. Documents at SF.

102A HQ-1073171-4
 6 GARCETTI

1-VCU

Approved: SE/10

Transmitted

(Number) (Time)

Per

SF 197-39
JDLW/pkv

assigned to the San Francisco Division during the time period
that [] asserts that she reviewed logs. All three
Agents are now retired, specifically, [] - 9/26/75;
[] - 6/20/75; and BRENNEISEN - 12/30/77.

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TAMBURELLO
HANLON
& WAGGENER

June 3, 1994

Tony Tamburello
Stuart Hanlon
Robert Waggener

Lawyers

214 Duboce Ave., San Francisco, CA 94103, 415/431-4500 Fax: 415/255-8631

[REDACTED]
Special Agents
Federal Bureau of Investigation
450 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102

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b7C

Dear Agents [REDACTED]

As you may, or may not, know, I am one of the attorneys for Mr. Elmer "Geronimo" Pratt. I have been his attorney for approximately [REDACTED]

I believe I spoke to Agent [REDACTED] in February of this year regarding an investigation Agents [REDACTED] were doing in Mr. Pratt's case.

At that time, it was my understanding that through a request from the District Attorney in Los Angeles County, the F.B.I. was conducting follow-up investigation with regard to affidavits

[REDACTED]

Other than interviewing [REDACTED] I do not know if you conducted any further investigation to verify their statements in the affidavits. However, because these matters were important to Mr. Pratt's case, I did, in fact, conduct further investigation.

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Through this investigation, I have obtained certain documents which are relevant to the question of whether or not [REDACTED] viewed F.B.I. documents in the mid-1970's, and whether these documents contained wire tap logs regarding electronic surveillance [REDACTED]

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[REDACTED] I believe what I have discovered is extremely relevant to answering these questions in the affirmative and would be helpful in your response to the Los Angeles County District Attorney's Office.

#94-517
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5/6/94 BY SP5CJ/bm

62A HQ-1073771-4

[REDACTED]
Federal Bureau of Investigation
June 3, 1994
Page 2

I will discuss these matters in somewhat chronological order. First, I discovered that a case did exist out of the District of Columbia, entitled David Dellinger v. John Mitchell, et al., case number 1768-69. I am enclosing as Exhibit B an Order in that case just for you to verify the caption and existence of the case.

I then received and reviewed correspondence between certain attorneys in this case that were written at the time of the mid-1970's investigation.

The first letter is a March 7, 1975 from attorney Leonard Weinglass to attorneys [REDACTED] of the Center for Constitutional Law in (at that time) New Jersey. It is my understanding that attorneys [REDACTED] [REDACTED] in the Dellinger v. Mitchell case.

In that letter, Mr. Weinglass states that on Thursday, March 6, he visited the offices of the F.B.I. in San Francisco. He met there with Special Agents [REDACTED] for the purpose of reviewing surveillance logs. He reports the following:

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[REDACTED]

2. The 40,000 pages are not verbatim transcripts of recorded conversations, but summary logs. These pages are maintained in several hundred volumes of approximately 250 pages each. Each separate day has a face sheet which lists the name of the agent on duty, the time of the call (and whether incoming or outgoing), and a brief statement of the identities of the parties and the purpose and content of the call.

There then follows a number of pages reciting the conversation in great detail.

3. The F.B.I. practice was to transcribe these materials daily at the conclusion of each eight-hour shift. A card index system was maintained with the names of individual parties. All of the tapes have been transcribed as indicated above." (Exhibit C, page 1).

[redacted]
Federal Bureau of Investigation
June 3, 1994
Page 3

Thus, in this letter, Mr. Weinglass verifies that he did enter the San Francisco F.B.I. office and reviewed logs, log summaries and/or the tapes themselves which would cover the period of [redacted]. In 1975, at least, all those summaries and logs were organized in a very formal fashion somewhere in the San Francisco field office of the F.B.I.

Further, in the letter, Mr. Weinglass discusses having two people with him in his March 6 visit. They were a [redacted] at Santa Clara University named [redacted] student named [redacted]. Mr. Weinglass indicated in the letter that there would be eight people looking through the records. He also indicated the difficulty of getting people in to see the records.

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In a letter of March 10, 1975, attorney [redacted] wrote to Mr. Weinglass, stating that the proper procedure for getting legal assistants in to view the records would be to file affidavits with the court (Exhibit D).

Attached as Exhibit E is a March 27, 1975 letter from [redacted] to the Clerk of the Court, with a copy to the U. S. Attorney, Mr. Edward S. Christenbury, including the affidavits of [redacted] to review records.

Thus, it is now established that [redacted] and [redacted] did, in fact, have a court order to gain access to the F.B.I. logs and summaries in the San Francisco F.B.I. office discussed in Mr. Weinglass' letter.

Finally, I was able to obtain one work record of [redacted] [redacted]. In this document and letter, dated September 15, 1975, [redacted] wrote to an F.B.I. Agent Leo Brenneisen at the Golden Gate Avenue office in San Francisco. The letter was regarding Dellinger v. Mitchell, number 17198.

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In this letter, [redacted] thanks Agent Brenneisen for allowing him to view records over the last few months. Further, in the letter, [redacted] refers to certain files and identification of said files. Though these files did not include the wire taps for [redacted] they certainly would get us close to finding those wire taps. The reference numbers are as follows: #157-1204 Sub 2, San Francisco 3215 AR and AE 1, 2, and 3 (Exhibit F).

[REDACTED]

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Federal Bureau of Investigation
June 3, 1994
Page 4

Thus, I believe we have established that [REDACTED] and [REDACTED] did, in fact, view wire tap logs in San Francisco under a court order that covered a period from [REDACTED] [REDACTED]

Because of the importance of this matter, I would like to meet with you to discuss this matter.

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Further, I would like to see if we could have the F.B.I.'s cooperation in locating the 40,000 pages of transcripts and summaries that is referred to by Mr. Weinglass. If we find these documents, I am sure we can find the date of [REDACTED] and determine once and for all if the statements of [REDACTED] and [REDACTED] are, in fact, accurate.

Since I am sure that you and your office join in my attempt to bring out the truth about Mr. Pratt's case, and because these matters cover events that happened 25 years ago, I do not believe there would be any privilege that could exist regarding the wire tap summaries, etc. If the F.B.I. maintains that there is such a privilege, I am sure it could be resolved in an appropriate manner.

Please contact me to discuss these matters.

[REDACTED]

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DISTRICT OF COLUMBIA

DAVID DELLINGER, et al.,

Plaintiffs,

FILED

Civil Action

v.

JAN 31 1975

No. 1768-69

JOHN N. MITCHELL, et al.

JAMES T. DAVEY, CLERK

ORDER

Defendants.

New #
42-112989

This matter having been opened to the Court by motion to modify its protective order entered on February 26, 1974, and it appearing from documents supplied to the plaintiffs and to the Court by the defendants, pursuant to discovery heretofore made, that certain persons designated on the Schedule filed in camera pursuant to this Order were the objects of electronic surveillance, and it appearing that those electronic surveillances are the basis for the causes of action herein, and it appearing that plaintiffs have demonstrated specific need to discuss with said objects of electronic surveillance matters relevant to those electronic surveillances and, in connection with such discussion, to disclose to any of the said persons the facts now in the possession of the plaintiffs with respect to the electronic surveillances directed at said persons, it is on this 31st day of January, 1975,

ORDERED:

That plaintiffs and their counsel may consult with each of the persons whose names appear on the Schedule filed in camera pursuant to this Order, and may disclose to each of the said persons the facts now in the possession of the plaintiffs with respect to the electronic surveillance directed at such persons.

#94-517

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 9/4/97 BY SP5CIB/ea

United States District Judge

EXHIBIT B

March 10, 1975

Dean Lan,

In talking with Christenbury today he mentioned the difficulty you had in getting two assistants into an FBI office. I told him that consistent with the order in Dellinger modifying the prior protective order, the appropriate affidavits for legal assistants who have access to discovery material would be filed with the Clerk of the District Court. If you will send the affidavits on to me I will get them filed.

I trust the three files arrived and I anxiously await the reactions of the Berkeley folks and also info on what you found in your San Francisco examination of FBI materials.

Best,



b6
b7C

Leonard Weinglass, Esq.
University of Southern California Law Center
Room 437 A
Los Angeles, California 90007

44-517
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

4/6/94 BY SP5-21/6

File

March 27, 1975

[Redacted]

b6
b7C

U. S. District Court
District of Columbia
Washington, D. C.

Re: Dellinger, et al. v. Mitchell, et al.
Civ Action #1768-69

Dear Sir:

Enclosed please find for filing the affidavits of

[Redacted]

indicating inclusion of these persons within the
protective order of the Court in the above captioned
case.

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b7C

Very truly yours,

[Redacted]

CC/The Honorable Aubrey Robinson
Edw. S. Christenbury, Esq.

Enclosures

#94-517
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 9/6/94 BY SP5CJ/6LW

1 Charles R. Garry
2 GARRY, DREYFUS, McTERNAN, BROTSKY,
3 HERNDON & PESONEN, INC.
4 1256 MARKET STREET AT CIVIC CENTER
5 SAN FRANCISCO, CALIFORNIA 94102
6 TEL: 864-3131

7 One of the Attorneys for Plaintiffs

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF COLUMBIA

10 David Dellinger, et al.)

Civil # 1768-69

11 vs.)

AFFIDAVIT

12 John Mitchell, et al.)

13 STATE OF CALIFORNIA)

SS.

b6

14 CITY AND COUNTY OF SAN FRANCISCO)

b7C

15 , being first duly sworn,
16 deposes and says:

17 1. Certain matters disclosed in within case pursuant to
18 discovery having been revealed to me, I hereby state:

19 A. I have recieved and am aware of the contents of the
20 Courts Protective Order dated February 26, 1974.

21 B. I agree to abide fully by the terms of the foregoing
22 Protective Order of the Court.

23 C. I hereby subject myself to the jurisdiction of The United
24 States District Court for the District of Columbia, with respect
25 to any claim as to any violation of said Protective Order of the
26 Court by me.

1 D. I hereby subject myself to the jurisdiction of the
2 United States District Court for the District of Columbia, with
3 respect to any action that said court may consider appropriate
4 thereto.

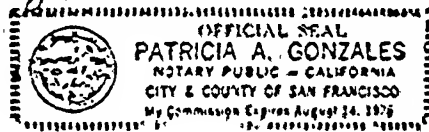
5
6
7
8 March 21, 1975

b6
b7C

9
10 Subscribed and sworn to before me
11 this 21st day of March.

12 Patricia A. Gonzales
13 Notary Public

14 My commission Expires:



GARRY, DREYFUS, McTERNAN, BROTSKY,
HERNDON & PESONEN, INC.
1236 MARKET STREET AT CIVIC CENTER
SAN FRANCISCO, CALIFORNIA 94102
TEL: 864-3131

1 Charles R. Garry
2 GARRY, DREYFUS, McTERNAN, BROTSKY,
3 HERNDON & PESONEN, INC.
4 1256 MARKET STREET AT CIVIC CENTER
5 SAN FRANCISCO, CALIFORNIA 94102
6 TEL: 864-3131

7 One of the Attorneys for Plaintiffs

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF COLUMBIA

10 David Dellinger, et al.)

Civil # 1768-69

11 vs.)

AFFIDAVIT

12 John Mitchell, et al.)

13 STATE OF CALIFORNIA)

14 CITY AND COUNTY OF SAN FRANCISCO)

SS.

b6

b7C

15 [REDACTED], being first duly sworn,
16 deposes and says:

17 1. Certain matters disclosed in within case pursuant to
18 discovery having been revealed to me, I hereby state:

19 A. I have recieved and am aware of the contents of the
20 Courts Protective Order dated February 26, 1974.

21 B. I agree to abide fully by the terms of the foregoing
22 Protective Order of the Court.

23 C. I hereby subject myself to the jurisdiction of The United
24 States District Court for the District of Columbia, with respect
25 to any claim as to any violation of said Protective Order of the
26 Court by me.

494-517
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 9/6/94 BY SP5CIB/6

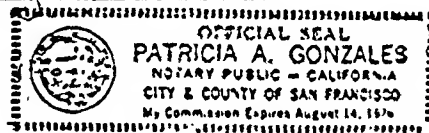
1 D. I hereby subject myself to the jurisdiction of the
2 United States District Court for the District of Columbia, with
3 respect to any action that said court may consider appropriate
4 thereto.

5
6
7
8 March 21, 1975

9
10 Subscribed and sworn to before me
11 this 21st day of March

12 Patricia A. Gonzales
13 Notary Public

14 My commission Expires:



GARRY, DREYFUS, McTERNAN, BROTSKY,
HERNDON & PESONEN, INC.
1236 MARKET STREET AT CIVIC CENTER
SAN FRANCISCO, CALIFORNIA 94102
TEL: 864-3131

b6
b7C

September 15, 1975

Mr. Leo Brenneisen
FBI
450 Golden Gate
P.O. Box 36015
San Francisco, California 94102

#17198

RE: DELLINGER vs. MITCHELL

Dear Agent Brenneisen:

Thank you for the courtesy and consideration shown to me over the last few months.

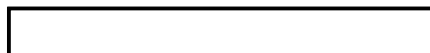
I have reviewed the logs which carry your identification #157-2204 Sub 2, San Francisco [redacted] for the periods:



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I will let you know if Mr. Garry feels that I should make any further review of your logs.

Very truly yours,



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DBF:bkg

4/20/94 FAXED To



May 4-5-17
TELETYPE UNIT NO. 00000000
HEREIN IS UNCLASSIFIED
DATE 9/6/94 SP5 ci/bw

3 SEP 94 01 54
FEDERAL BUREAU
OF INVESTIGATION

460

1-45
Ident.
Info. Mgmt.
Insp.
Intell.
Lab.
Legal Coun.
Plan. & Insp.
Rec. Mgmt.
Tech. Serv.
Training
Off. of Public Affs.
Telephone Rm.
Director's Office

0410 MRI 01912

RR RUCNFB

DE FBILA #0054 2452316

ZNR UUUUU

R 022253Z SEP 94

FM FBI LOS ANGELES (62A-HQ-1073771)

TO DIRECTOR FBI/ROUTINE/

BT

UNCLAS

CITE: //3410:IS-1//

PASS: SSA [REDACTED] VC/FU, CID.

b6
b7C

SUBJECT: ELMER PRATT, AKA GERONIMO; INQUIRY OF GIL GARCETTI,
LOS ANGELES DISTRICT ATTORNEY; OO: HQ.

62A-HQ-1073771-5

RE 8/20/94 BUREAU TELETYPE TO LOS ANGELES.

FOR INFORMATION OF THE BUREAU, VC/FU, CID, ON 8/31/94,
LOS ANGELES DISTRICT ATTORNEY'S OFFICE (LADAO) REPRESENTATIVES

[REDACTED] VISITED THE LOS ANGELES
FIELD OFFICE FOR PURPOSES OF REVIEWING LOS ANGELES FILE 157-
3447, [REDACTED]

b6
b7C

AS MENTIONED IN PRIOR TELCALLS BETWEEN LOS ANGELES PLA

6- [REDACTED]

cc: 384/

Pls ensure that
coordinates w/ the
GC office - JRW

PAGE TWO DE FBILA 0054 UNCLAS

[REDACTED] AND SSA [REDACTED] THE ORIGINAL 157-3447 FILE HAS NOT BEEN LOCATED IN THE CLOSED FILES SECTION IN LOS ANGELES AND COULD, QUITE POSSIBLY, HAVE BEEN FORWARDED TO FBIHQ IN PRIOR YEARS WHEN INQUIRIES CONCERNING BLACK PANTHER PARTY INVESTIGATIONS AND RELATED INVESTIGATIONS HAVE ARISEN.

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b7C

A COMPLETE, UNREDACTED COPY OF 157-3447 WAS LOCATED IN ITS INCORPORATED STATE WITHIN LOS ANGELES FILE 190-504, THE FREEDOM OF INFORMATION - PRIVACY ACT (FOIPA) REQUEST FILE OF [REDACTED]

THE ABOVE 157-3447 COPY WAS PROVIDED TO [REDACTED] AND [REDACTED] FOR THEIR ACCESS AND REVIEW. [REDACTED] WERE NOT ALLOWED TO PHOTOCOPY ANY SERIALS BUT WERE PERMITTED TO MAKE HANDWRITTEN AND NOTEBOOK COMPUTER NOTES.

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b7C

[REDACTED] MARKED NUMEROUS SERIALS WITHIN THIS FILE, INDICATING THAT THESE ARE THE SERIALS FOR WHICH THEY WOULD LIKE COPIES TO BE PROVIDED.

LOS ANGELES WILL, ACCORDING TO INSTRUCTIONS IN REFERENCED TELETYPE, PHOTOCOPY THESE SERIALS OF INTEREST AND FORWARD TO FBIHQ IN THE VERY NEAR FUTURE, UNDER COVER AIRTEL, SO THAT THE CIVIL DISCOVERY REVIEW UNIT MAY REVIEW AND REDACT, IF

PAGE THREE DE FBILA 0054 UNCLAS

NECESSARY, BEFORE THESE SERIALS CAN BE DISSEMINATED TO



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b7C

BT

#0054

NNNN



San Francisco Office



FBI FACSIMILE COVERSHEET

CLASSIFICATION

PRECEDENCE

- ☐ Immediate
☐ Priority
☒ Routine

- ☐ Top Secret
☐ Secret
☐ Confidential
☐ Sensitive
☐ UNCLAS EFTO
☒ UNCLASSIFIED

Time Transmitted: _____

Sender's Initials: capNumber of Pages: 6To: FBT HQ
(Name of Office)Date: 8/10/94Facsimile number: 202-324-3089

Attn: _____

(Name)RoomTelephone No.Room 5042 X 4294

b6

b7C

From: SF
(Name of Office)Subject: ELMER PRAHSpecial Handling Instructions: call _____ immediately62A-HQ-1073776

Originator's Name _____

phone: X 7405

b6

b7C

Originator's Facsimile Number: _____

Approved: _____

62A/HQ 107377162Aenc.(3)

F B I

Date: 5/9/75

Transmit the following in CODE
(Type in plaintext or code)Via TELETYPE NITEL
(Priority)

23

TO: DIRECTOR, FBI (62-112989)

FROM: SAC, SAN FRANCISCO (66-672 B)

JUNE

DAVID T. DELLINGER, ET AL; VS. ATTORNEY GENERAL JOHN N.

MITCHELL, ET AL; ALLEGED VIOLATION OF CONSTITUTIONAL RIGHTS

THEY ARE TO RETURN ON MAY 21, 1975 FOR FURTHER REVIEW.

RFS/sjp.
(1)Approved: CW

Special Agent in Charge

Sent: 6:45 PMPer: CB

FD-36 (Rev. 5-22-64)

FBI

Date: 5/20/75

13

Transmit the following in PLAINTEXT
(Type in plaintext or code)Via TELETYPE NITEL
(Priority)

TO: DIRECTOR (62-112989)

FROM: SAN FRANCISCO (66-672B)

ATTN: LEGAL SECTION

DAVID T. DELLINGER, ET AL; VS. ATTORNEY GENERAL JOHN N. MITCHELL,
ET AL; ALLEGED VIOLATION OF CONSTITUTIONAL RIGHTS.[REDACTED]
[REDACTED] HE HAS REVIEWED

THESE FILES ON MAY 14, 15, AND 19, 1975. HE IS TO RETURN ON
MAY 21 FOR FURTHER REVIEW. INASMUCH AS HIS REVIEW OF THESE
FILES IS EXTREMELY SLOW, ~~IT IS REQUESTED~~ THAT BUREAU PERMISSION
BE GIVEN TO HAVE A SPECIAL EMPLOYEE OR CLERK BY WITH HIM DURING
HIS FILE REVIEW. IT IS FELT THAT THE AGENT PERSONNEL TIME IS
NOT NEEDED OR JUSTIFIED, INASMUCH AS THE MECHANICS OF THIS
OPERATION HAVE BEEN SET UP. IT IS POINTED OUT THAT THE DUTY
AGENT IS NEXT DOOR TO THE OFFICE WHERE THE FILES ARE BEING
REVIEWED AND IS IMMEDIATELY AVAILABLE IF ANY QUESTION ARISES.
CURRENTLY THE ONLY REASON FOR THE PRESENCE OF AN AGENT IS TO
INSURE THAT HE DOES NOT TAKE ANY PAGES OUT OF THE VOLUMES
CONTAINING THE LOGS.

RFS/sdr
(1) *par*

66-672B-3136

Approved: *clg*
Special Agent in ChargeSent *5:40* M Per *clg*

U.S. Government Printing Office: 1972 - 455-574

b3
b6
b7c



In Reply, Please Refer to
File No.

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

San Francisco, California

April 29, 1975

DAVID DELLINGER, et al., v.
JOHN N. MITCHELL, et al.
(U.S.D.C., D.C.)
CIVIL ACTION NO. 1768-69

In response to Interrogatory 1 of plaintiffs' second set of interrogatories to Defendant John N. Mitchell, there is set forth the identities, dates of service as Special Agent in Charge (SAC) of the San Francisco FBI Office, and current business addresses of these former SACs at San Francisco:

<u>Name</u>	<u>Dates of Service</u>	<u>Current Business Address</u>
Curtis O. Lynam	April 22, 1963 - August 21, 1967	Vice Chairman California Adult Authority 1050 Ferry Building San Francisco, California 94111
Charles W. Bates	July 10, 1967 - May 1, 1970	450 Golden Gate Avenue Box 36015 San Francisco, California 94102
Harry J. Morgan	April 27, 1970 - September 28, 1970	Vice President-Administration Conval Corporation Box 14360 Beekman and Waverly Sts. Cincinnati, Ohio 45214
Robert E. Gebhardt	September 29, 1970 - November 8, 1972	-Assistant Director FBI Washington, D.C. 20535

In response to Interrogatory 2 of plaintiffs' second set of interrogatories to defendant John N. Mitchell, the individuals serving as SAC of the San Francisco Office of the FBI at the time of installation of electronic surveillances

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

66-67262-7

DAVID DELLINGER, et al., v.
JOHN N. MITCHELL, et al.
(U.S.D.C., D.C.)
CIVIL ACTION NO. 1768-69

were advised of the installation on the same date a communication was sent to the Director, FBI, advising him of such installation. Set forth below are the dates of the communications, as well as the dates of activation and/or installation and the location of the electronic surveillances.

Date of SF Com-
munication to
FBIHQ

Date of Activation/

b3

Installation

Location

SF airtel,
8/7/64

SF airtel,
12/8/64

SF airtel,
2/26/69
SF airtel,
2/26/69
SF airtel,
6/24/69
SF airtel,
7/23/69

SF airtel,
5/27/69
SF airtel,
5/27/69
not in
SF files

DAVID DELLINGER, et al., v.
JOHN N. MITCHELL, et al.
(U.S.D.C., D.C.)
CIVIL ACTION NO. 1768-69

b3

SF airtel,
6/12/70

SF airtel,
8/7/70

SF teletype,
12/18/70
SF airtel,
1/5/71

SF airtel,
12/24/70

SF teletype,
6/7/72

SF AIRTEL
5/8/71

FBI FACSIMILE
COVERSHEET

CLASSIFICATION

PRECEDENCE

- ☐ Immediate
☐ Priority
☐ Routine

- ☐ Top Secret
☐ Secret
☐ Confidential
☐ Sensitive
☐ Unclassified

Time Transmitted: _____

Sender's Initials: _____

Number of Pages: 11To: FBI HQ
(Name of Office)Date: 7/19/94Facsimile number: 202-3243089Attn: SSA
(Name)Rm 5042From: NYO
(Name of Office)62A/HQ 107371

Subject:

Dellinger v Mitchell
Serials that may help!(trust as orig)b6
b7CSpecial Handling Instructions: hand deliver62A-HQ-107371-7Originator's Name: SATelephone: NYO 3615

Originator's Facsimile Number: _____

Approved: _____

Reviewed 8/1/94
f

FBI/DOJ

enc(6)

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : SAC, NEW YORK (100-121672)

DATE: 8/9/74

FROM : SA [REDACTED]

JUNE

SUBJECT: DAVID T. DELLINGER et al, versus Attorney General b6
JOHN N. MITCHELL et al b7C
Alleged Violation of Constitutional Rights

On 8/8/74, Attorney [REDACTED]

[REDACTED] N.J. visited the New York Office of the FBI, at 3:00pm, for the purpose of reviewing Elsur logs pertaining to his clients in captioned matter. Authority was granted through a discovery order issued by EDWARD S. CHRISTENBERRY, Department of Justice. [REDACTED] upon arrival, properly identified himself to SA's [REDACTED]

[REDACTED]

[REDACTED] was advised that the total [REDACTED] logs to be reviewed were contained in 22 volumes. He stated, that due to the volume of material, he was not sure how he would copy the work. [REDACTED] inquired as to the possibility of the FBI xeroxing the pages for him, and was informed that this was not possible. [REDACTED] advised that he would consult with his fellow attorneys and Mr. CHRISTENBERRY as to the course of action to follow. He stated that he would be visiting other FBI offices in this area, and after determining the volume of work, would recontact SA [REDACTED]. The interview was concluded at 4:55pm.



5010-110

① - 100-121672
1 - Supv. 3A6
NFD
(2)

100-121672 Sub H-15

SEARCHED	INDEXED
SERIALIZED	FILED
AUG 14 1974	
FBI-NEW YORK	

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

airtel

11/15/74

To: SACs Baltimore (157-3241 Sub A)
Boston (62-5411)
Chicago (62-7126)
Cleveland (66-5396)
Detroit (62-5032)
Los Angeles (64-430)
New Orleans (66-3543)
New York (100-121872)
Philadelphia (157-2054)
Sacramento (66-179)
San Francisco (66-372 B)
Washington Field (66-779 Sub C)

From: Director, FBI (62-112980)

DAVID DELLINGER, et al. v.
JOHN N. MITCHELL, et al.
(U.S.D.C., D.C.)
CIVIL ACTION NO. 1768-69

ReButel dated 8/5/74.

Referenced communication indicated that the Department has filed answers to interrogatories, a copy of which was furnished to you and is now available to plaintiffs, which identified certain electronic coverage of plaintiffs and that plaintiffs and their counsel or record were to be given access to the records (tapes, logs and transcripts) of that coverage.

For your information, on 10/24/74, the Court entered an order in this civil action, a copy of which is enclosed, to modify its earlier protective order dated 2/26/74, to allow plaintiffs "to use commercial facilities and/or

Enc.

100-121872-51

SEARCHED	INDEXED
SERIALIZED	FILED
JUL 19 1994	
FBI NEW YORK	

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b7C

Airtel to SACs, etc.
Re: David Dellinger, et al., v.
John N. Mitchell, et al.

student or clerical personnel or other assistants to make copies and to monitor the copying process and use student and clerical personnel to read and analyze all material being produced in the course of discovery and to make reports thereon to plaintiffs' counsel or their attorneys. The order also specifies that "any such person obtaining access to the information . . . shall be informed of the Court's order dated 7/19/94 and shall sign an affidavit . . . and indicate assurance of compliance with the order."

Note the Department has exerted claims of executive privilege regarding other overhearings of plaintiffs. Information regarding these other overhearings is being made available to the court in camera, if at all only. Thus, under no circumstances should plaintiffs be furnished transcripts or logs of coverage other than that set forth in the Department's answer.

OCT 23

OCT 23 1974
JUSTICEUNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FILED

OCT 24 1974

DAVID DELLINGER, et al.,

Plaintiffs,

Civil Action

v.

No. 1768-69

JOHN N. MITCHELL, et al.,

Defendants.

ORDER

JAMES E. DAVEY, CLERK

This matter having been opened to the Court by way of motion to modify the protective order by Morton Stavis and William Bender, appearing as counsel for the plaintiffs, and in the presence of Edward S. Christenbury, attorney, Department of Justice, appearing as counsel for the defendants, and it appearing to the Court that good cause has been shown for the granting of plaintiffs' motion, it is hereby on this 24th day of October, 1974:

ORDERED, that plaintiffs' motion to modify the protective order entered herein on February 26, 1974, is granted to allow the plaintiffs, in connection with their making of copies, as authorized by F.R.C.P. Rule 34, of --

a) The material, documents, and tapes set forth in response to Interrogatory No. 4 and Response to Interrogatory No. 11-F of Defendants' Supplementary Response to Interrogatories Propounded by the Plaintiffs, filed herein on July 24, 1974;

b) The documents referred to in defendants' responses to plaintiffs' request for production of

RECEIVED

OCT 31 1974

Litigation Section

RECEIVED

OCT 31 1974

CRIMINAL DIVISION

14-5-11-7	
DEPARTMENT OF JUSTICE	
22	OCT 30 1974
S.A.C.	
CRIMINAL DIV.	
Int. Sec. Section	

INDEXED

documents, forwarded by defendants under date of August 12, 1974; and


c) Such other materials and/or documents as may be made available for inspection to the plaintiffs pursuant to further discovery, to use commercial facilities and/or student or clerical personnel or other assistants to make copies and/or monitor the copying process and use student and clerical personnel to read and analyze all material being provided in the course of discovery, and to make reports thereon to counsel of record, it being understood that any such person obtaining access to the information for this purpose shall be informed of the Court's order and shall sign an affidavit in the form annexed hereto to that effect and indicate assurance of compliance to the order, which affidavit shall be filed with the Clerk of the Court.

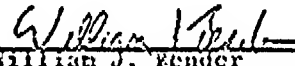
IT IS FURTHER ORDERED that the protective order dated February 26, 1974 shall be applicable to all persons to whom revelations of material are made pursuant to this order.


United States District Judge

Consent as to form and

~~substantive~~


Edward S. Christenbury
U. S. Dept. of Justice
Washington, D. C.
Attorney for Defendants


William J. Bender
c/o Constitutional Litigation Clinic
Rutgers Law School
175 University Avenue
Newark, New Jersey 07102
One of the Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FILED

OCT 24 1974

DAVID DELLINGER, et al.,

Plaintiffs,

v.

JOHN N. MITCHELL, et al.

Defendants.

JAMES E. DAVEY, CLERK

Civil Action

No. 1768-69

AFFIDAVIT

STATE OF
COUNTY OF

ss.:

_____ being duly sworn deposes and says:

1. Certain material disclosed in the within case pursuant to discovery having been revealed to me, I hereby state

(a) I have received and am aware of the contents of the Court's protective order dated February 26, 1974;

(b) I agree to abide fully by the terms of the foregoing protective order;

(c) I hereby subject myself to the jurisdiction of the Court with respect to any claim as to any violation of the said protective order by me, or as to any action that the Court may consider appropriate with respect thereto.

Sworn to and subscribed
before me this _____ day
of October, 1974.

AIRTEL

To: SACs Baltimore (157-3241 Sub A)
 Boston (62-5411)
 Chicago (82-7134)
 Cleveland (84-1234)
 Detroit (88-8002)
 Los Angeles (84-234)
 New Haven (84-234)
 New York (100-121672)
 Philadelphia (157-3004)
 Sacramento (84-170)
 San Francisco (84-672 B)
 Washington Field (84-770 Sub G)

From: Director, FBI (82-112000)

DAVID DELLINGER, et al., v. JOHN A. MITCHELL, et al.
 (U.S.D.C., D.C.)
 CIVIL ACTION NO. 1700-89

ReBairtel dated 11-15-74.

On 3-18-75 Departmental Attorney [redacted] advised the following individuals have executed affidavits in accordance with the 10-14-74 Court Order in this matter and are to be allowed access to material being provided in the course of discovery in captioned civil action.

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WF 100-121672 Sub A-25

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SERIALIZED	FILED
MAR 24 1975	
FBI - NEW YORK	

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Airtel to SAC, Baltimore, et al.

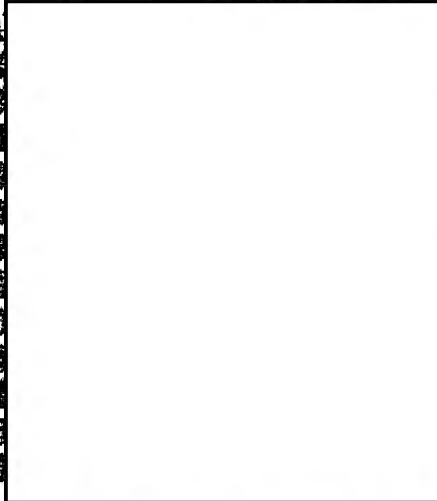
Re: David Dellinger, et al., v. John H. Mitchell, et al.

(U.S.D.C., D.C.)

Civil Action No. 1789-88

ATTORNEYS

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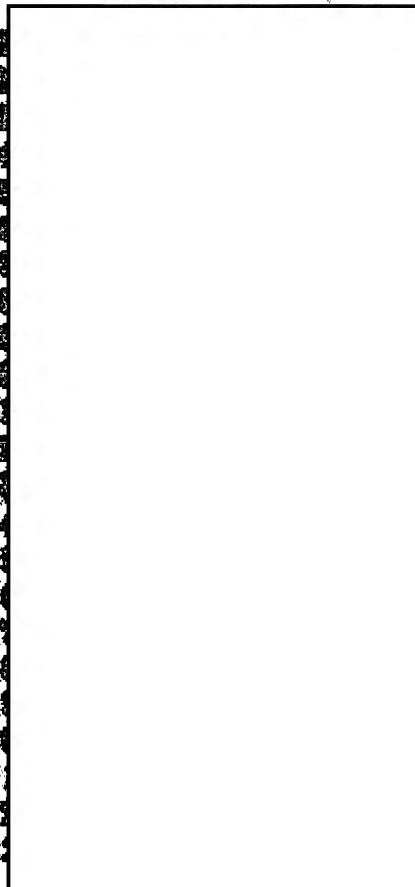


-146994



STUDENTS OR CLERICAL PERSONNEL

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b7C

Airtel to SAC, Baltimore, et al.

Re: David Dellinger, et al., v. John W. Mitchell, et al.

(U.S.D.C., D.C.)

Civil Action No. 1768-89

[redacted] added that subsequent to review by any of the above-named individuals, the field office involved should make a record of the tapes, logs, or transcripts copied or reviewed, for the Department may subsequently desire to review the same material. You should make no effort, however, to ascertain the information pertaining abstract or note from the logs, tapes, or transcripts.

If any questions or problems develop concerning this matter you should contact FBI Headquarters, Legal Counsel Division.

FBI

Date: 4/7/75

Transmit the following in PLAINTEXT
(Type in plaintext or code)

Via TELETYPE NITEL
(Priority)

TO: DIRECTOR, FBI (176-1401)
FROM: SAC, LOS ANGELES (176-79B)
ATTN: LEGAL COUNCIL SECTION

✓
DAVID T. DELLINGER, ET AL VS JOHN N. MITCHELL, ET AL,
(DDC) CIVIL ACTION NUMBER 1768-69.

ON APRIL 4, 1975, A FEMALE WHO IDENTIFIED HERSELF [REDACTED]

[REDACTED] LEONARD I. WEINGLASS TELEPHONICALLY CONTACTED THE
LOS ANGELES OFFICE AND ADVISED THAT WEINGLASS DESIRED TO MAKE
ARRANGEMENTS EITHER ON APRIL 8, 1975 OR APRIL 10, 1975 TO
COME TO THE LOS ANGELES FBI OFFICE TO REVIEW FILES IN ABOVE
CAPTIONED MATTER. ARRANGEMENTS WERE MADE FOR WEINGLASS TO COME
TO THE LOS ANGELES OFFICE ON APRIL 8, 1975 AT APPROXIMATELY
10 A.M.

INTERESTED OFFICES ADVISED BY AIRMAIL OF WEINGLASS' VISIT
TO THE LOS ANGELES OFFICE.

1-Baltimore (AM)
1-Boston (AM)
1-Chicago (AM)
1-Cleveland (AM)
1-Detroit (AM)
1-New Haven (AM)

TG/cis
(13)

① New York (AM)
1-Philadelphia (AM)
1-Sacramento
1-San Francisco
1-WFO (AM)
1-Los Angeles

100-121672 Sub A-20
176-133
SEARCHED INDEXED
SERIALIZED FILED
APR 11 1975
FBI - NEW YORK

Approved: _____
Special Agent in Charge

Sent

M

Per

FBI FACSIMILE
COVERSHEET

CLASSIFICATION

PRECEDENCE

- ☐ Immediate
☐ Priority
☐ Routine

- ☐ Top Secret
☐ Secret
☐ Confidential
☐ Sensitive
☐ Unclassified

Time Transmitted: _____

Sender's Initials: _____

Number of Pages: 2To: _____ Date: 7/19/94
(Name of Office)Facsimile number: 202-324-3089

Attn: _____

Room 5042
Telephone No.)b6
b7CFrom: Sacramento
(Name of Office)Subject: David Dellinger, et al, v.John N. Mitchell, et al(U.S.D.C., D.C.) Civil Action #1768-6962A-HQ-1073711
(tentative)
XSpecial Handling Instructions: Pls hand carry toMr.Originator's Name: SASTelephone: 916-978-8200

Originator's Facsimile Number: _____

Approved: RHReview 8/2/94
X

FBI/DOJ

enc(2)

Sacramento, California

May 9, 1975

TO
DAVID DELLINGER, et al, v.
JOHN N. MITCHELL, et al
(U.S.D.C., D.C.)
CIVIL ACTION #1768-69

On May 8, 1975, Leonard Irvin Weinglass, 2025 Avon Street, Los Angeles, California, appeared at the Sacramento, California, Office of the Federal Bureau of Investigation, at which time he was given access to certain documents pursuant to court order. 2

These documents are described as follows:

Surveillance logs with partial transcriptions of a telephone surveillance conducted by the FBI from

b3

Mr. Weinglass made notes concerning information contained in these logs, however, no copies of the logs were made.

His review of the logs lasted approximately 35 minutes and he advised upon leaving that he did not expect further review of these logs would be necessary.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

5 - Bureau

① - Sacramento (157-52 Sub 1)

HLL:emw

157-52-101
SEARCHED INDEXED
SERIALIZED FILED

FD-36 (Rev. 5-22-64)

FBI

Date: 5/6/75

Transmit the following in CODED
(Type in plaintext or code)Via TELETYPE NITEL
(Priority)

TO DIRECTOR (62-112989)

FROM SACRAMENTO (157-52 SUB 1)

ATTN LEGAL COUNSEL SECTION

DAVID T. DELLINGER, ET AL, V. JOHN N. MITCHELL, ET AL, (DDC) CIVIL
ACTION #1768-69.

RE LOS ANGELES NITEL TO BUREAU, APR. 7, 1975.

ON MAY 6, 1975, FEMALE [REDACTED]

[REDACTED] LEONARD WEINGLASS, TELEPHONICALLY CONTACTED SACRAMENTO
OFFICE AND ADVISED WEINGLASS DESIRED TO MAKE ARRANGEMENTS TO REVIEW
FILES AT SACRAMENTO OFFICE AT APPROXIMATELY 10:30 AM, THURSDAY, MAY 8
1975. ARRANGEMENTS WERE SO MADE.

INTERESTED OFFICES ADVISED BY AIRMAIL OF WEINGLASS VISIT TO
SACRAMENTO OFFICE.

- 1- Baltimore (AM)
- 1- Boston (AM)
- 1- Chicago (AM)
- 1- Cleveland (AM)
- 1- Detroit (AM)
- 1- Los Angeles (AM)
- 1- New Haven (AM)

HLL:epg
(12)

- 1- New York (AM)
- 1- Philadelphia (AM)
- 1- San Francisco (AM)
- 1- WFO (AM)
- 1- Sacramento

100-121672-944

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SERIALIZED	FILED
MAY 10 1975	
FBI - NEW YORK	

Approved: _____
Special Agent in Charge

Sent _____ M Per _____

FBI FACSIMILE
COVERSHEET

CLASSIFICATION

PRECEDENCE

☐ Immediate
☐ Priority
☒ Routine

☐ Top Secret
☐ Secret
☐ Confidential
☐ Sensitive
☒ Unclassified

Time Transmitted: _____

Sender's Initials: TSGNumber of Pages: 1To: FBIHQ / Violent Crime Unit
(Name of Office)Date: 8/10/94Facsimile number: (202) 324-3089Attn: SSA
(Name)b6
b7CFrom: Los Angeles Field Office / Legal Unit
(Name of Office)Subject: Pratt Inquiry
Re: 6/5/69 Letter (157-3447)62A/HQ1073771
(text as copy)b6
b7C
b7D

Special Handling Instructions: _____

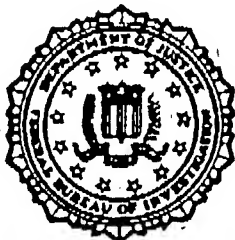
62A-HQ-1073771-9

Originator's Name: SA _____

Telephone: (310) 996-3380Originator's Facsimile Number: (310) 996-3573

Approved: _____

FBI/DOJ



FBI FACSIMILE COVERSHEET

CLASSIFICATION

PRECEDENCE

- ☐ Immediate
☐ Priority
☒ Routine

- ☐ Top Secret
☐ Secret
☐ Confidential
☐ Sensitive
☒ Unclassified

Time Transmitted: Sender's Initials: Number of Pages: 4b6
b7CTo: FBIHQ / Violent Crime Unit
(Name of Office)Date: 8/10/94Facsimile number: (202) 324-3089Attn: SSA
(Name)b6
b7CFrom: Los Angeles Field Office / Legal Unit
(Name of Office)Subject: Pratt Inquiry① ELMER62A-HQ 1073771
(Just as orig)original, unredacted copies of
letters to Director (LA File 157-3447)Special Handling Instructions: (02A-HQ-1073771-10)b6
b7COriginator's Name: SA Telephone: (310) 996-3380Originator's Facsimile Number: (310) 996-3573Approved:

FBI/DOJ

enclosures (2)

DIRECTOR, FBI

6/5/69

SAC, LOS ANGELES (91-9235)(C)

ELMER PRATT
BR - CONSPIRACY

Re Los Angeles letter to Director dated 5/6/69.

Almost daily contact has been maintained with (PROB) and no information has been developed to indicate that any Black Panther Party (BPP) members have been plotting bank robberies in Los Angeles or elsewhere. Source is alert for any information concerning any general or specific plans by members of the BPP, including captioned individual, to commit bank robberies, and will furnish any positive information as soon as it is received. Captioned case is being closed subject to being reopened at any time information is received to indicate that PRATT or other members of the BPP are plotting or are responsible for bank robberies.

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2 - Bureau (RM)
2 - Los Angeles
(1 - 157-3447)

PAC:gnp
(4) gnt

157-344

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FILED _____

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~~157-344-7~~

OPTIONAL FORM NO.
MAY 1962 EDITION
GSA GEN. REG. NO. 27

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI

FROM : *WBB*
4/0 SAC, LOS ANGELES (91-9235)

SUBJECT: ELMER PRATT
BR - CONSPIRACY

DATE: 5/6/69

ReBulet to Los Angeles dated 5/1/69.

Upon receipt of information as set forth in letterhead memorandum dated 4/17/69, appropriate persons at the Los Angeles Police Department and the Los Angeles County Sheriff's Office were advised of the information concerning a possible bank robbery at an unknown time.

As the Bureau is aware, Los Angeles is investigating one bank robbery committed by persons involved in "US" [redacted] aka; UNSUBS (3); BANK OF AMERICA, NT & SA, Jefferson-Hill Branch, 3320 South Hill Street, Los Angeles, California, 1/10/69, BR").

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Since receipt of information indicating Black Panther Party (BPP) members and members of other militant racial groups have possibly been involved in bank robbery matters in the Los Angeles area, photographs of known members of these organizations fitting the description in unsub bank robbery cases have been displayed to witnesses where appropriate.

The individuals present at a meeting on [redacted] where

[redacted]
All of these persons are known members of the BPP and are persons having a propensity for violence. The source

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2 - Bureau (RM)
3 - Los Angeles
① - 157-3447)

CFO: gnt.
(5)

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SERIALIZED —
FILED —

OFFICE COPY

LA 91-9235

Sources in the Los Angeles area have not furnished
any additional information indicating any furtherance of this

[redacted]
[redacted] case is being opened in
the Los Angeles Office on ELMER PRATT and in the event any
future information comes to the attention of this office,
appropriate investigation to attempt to develop a conspiracy
case will be conducted.

b7D

Memorandum



To : Mr. Conforti

Date 9/27/94

From :

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Subject: **ELMER PRATT, AKA "GERONIMO";
INQUIRY OF GIL GARCETTI,
LOS ANGELES COUNTY DISTRICT ATTORNEY (LADA);
OO: HQ (62A-HQ-1073771)**

PURPOSE: To report activity associated with a request from DOJ for a review of FBI files and documents concerning Elmer Pratt, aka Geronimo, relative to a request of Gil Garcetti, Los Angeles County District Attorney (LADA) to Attorney General Janet Reno, dated 12/1/93.

SYNOPSIS: On 12/1/93, LADA Garcetti wrote a letter to Attorney General Reno requesting that she assist the LADA in determining if the FBI has in its possession any information which will impact on a habeas corpus petition from Elmer Pratt, an incarcerated California prisoner and "cause celebre." This request was reviewed by the Department of Justice and forwarded to the Violent Crimes and Major Offenders Section, Criminal Investigative Division (CID), FBI, on 2/1/94.

In summary, Garcetti advised AG Reno that the [redacted] of Centurion Ministries, provided his office with a forty-five page document that alleges that Pratt's conviction for a double shooting and homicide which occurred 12/18/68, in Santa Monica, California, was erroneous. At the time of the shooting/murder, Pratt was a recently discharged Vietnam veteran and a member of the Los Angeles Chapter of the Black Panther Party (BPP). [redacted] analysis alleges that the FBI possessed information, obtained through electronic surveillance occurring during that period, which could establish Pratt's innocence. This analysis also [redacted]

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62A-HQ-1073771

[CONTINUED - OVER]

1 - Mr. Conforti

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AS/as

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File - 62A-HQ-1073771

Elmer Pratt, aka "Geronimo";
Inquiry of Gil Garcetti,
Los Angeles County District Attorney;

RECOMMENDATIONS: It is recommended that the VC/FU prepare an Information Memorandum for the Attorney General addressing the allegations related to Pratt; and that the VC/FU provide enclosures consisting of redacted copies of the documents requested by the LADAO.

APPROVED:

sen
Director _____
Deputy Director _____

Crim. Inv.	Laboratory	Off. of EEO
Crim. Jus. Info.	Legal Counsel	Affairs
Ident.	National Sec.	Off. of Public
Fin. & Pers.	Personnel	& Cong. Affs.
Info. Res.	Training	
Inspection		

DETAILS: Elmer "Geronimo" Pratt was charged and convicted of robbery, murder and attempted murder, as a result of an incident that occurred on 12/18/68, in Santa Monica, California. Pratt's conviction was affirmed on appeal and he has unsuccessfully filed writs of habeas corpus on four occasions. Information has



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The FBI's actions regarding the BPP and the Pratt prosecution have been addressed several times since Pratt's conviction. In late 1979, the Honorable Paul N. McCloskey Jr., met with the FBI to obtain details on the FBI's possible possession of information pertinent to Pratt's claims of innocence. McCloskey sought an FBI review of the Pratt investigation to determine if any information relevant to Pratt's innocence or guilt was evident in FBI files. Pratt and others have alleged that his prosecution and conviction were part of a government effort to suppress the BPP.

As a result of McCloskey's request, the Director, FBI, ordered the formation of a task force, the "Pratt Task Force," to conduct an extensive review of all FBIHQ, FBI San Francisco (SF), and FBI Los Angeles (LA) files relating to Pratt and known associates to determine if the FBI had any information impacting on Pratt. This task force conducted not only an indices search, but also a page-by-page, line-by-line review of all files that may have contained relevant information.

The task force's reviews disclosed information in the possession of the FBI relevant to Pratt which concerned the existence of an FBI source who reported on Pratt, evidence of possible FBI informant(s) attendance at legal defense strategy meetings, and the existence of information possibly derived from an apparently illegal local law enforcement electronic intercept. The above information was provided to the U.S. Attorney, Los

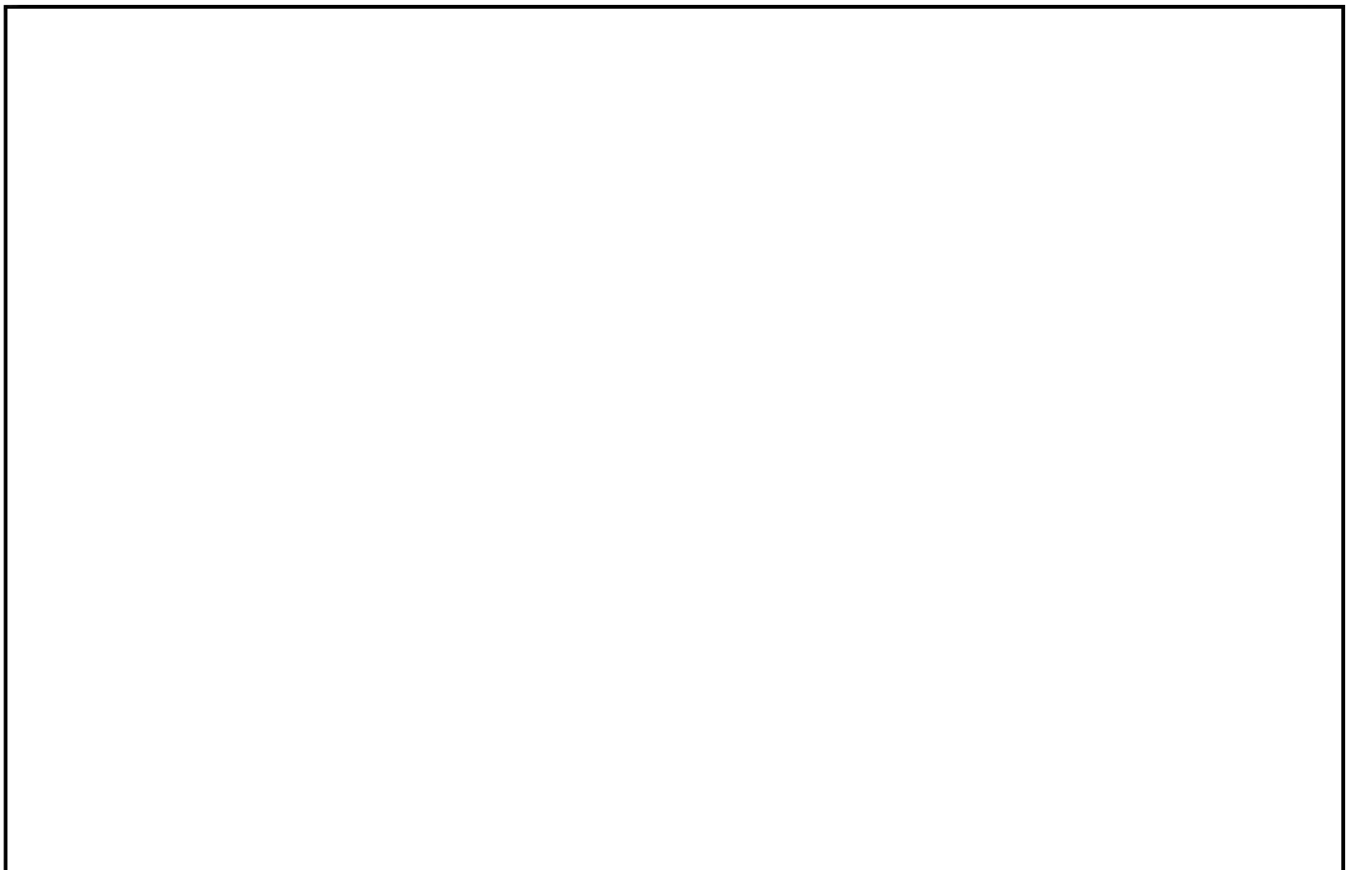
Elmer Pratt, aka "Geronimo";
Inquiry of Gil Garcetti,
Los Angeles County District Attorney;

Angeles, and appropriate California judicial authorities by representatives of the FBI/DOJ on 12/11/79, 12/12/79, and 12/13/79. This information was provided in document report form to the California State Attorney General and the California Judiciary for use in Pratt's 1/18/80, habeas corpus hearing.

The task force review concluded that Pratt was not the subject of any FBI surveillance or FBI electronic intercept during December, 1968. The information in the FBI's files



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On 2/1/94, SSA [redacted] Violent Crimes/Fugitive Unit (VC/FU), VCMOS, CID, FBIHQ, was assigned this matter for review and coordination with DOJ. SSA [redacted]

Elmer Pratt, aka "Geronimo";
Inquiry of Gil Garcetti,
Los Angeles County District Attorney;

initiated a review of relevant FBIHQ and field office files concerning Pratt, the Black Panther Party, previous FBI reviews of the Pratt issue, [redacted] ELSUR Index, and SF and LA field office files on source reporting regarding the BPP, etc.

On 2/7/94, by Director's Airtel to SAC SF, SF was requested to located and interview [redacted] regarding their allegations, to review their files on the above issues, and to provide FBIHQ with results. Direct coordination was implemented with SF PLA [redacted]

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On 3/22/94, coordination was implemented with FBI LA, SA [redacted] PLA, regarding this issue and relevant files existing in the LA field office.

On 4/20/94, through contact with DOJ and FBI SF, information was developed which suggested that the alleged FBI electronic surveillance logs viewed by [redacted] were located in Civil Litigation and Discovery documents relating to the Socialists Workers Party V. Mitchell civil suit.

On 4/21/94, SSA [redacted] VC/FU, met with Richard Scruggs, Assistant to the Attorney General/Acting Counsel for the Office of Intelligence, Policy and Review, DOJ, concerning the CID's review of LADA Gil Garcetti's request on Elmer "Geronimo" Pratt. Scruggs advised that he had received a second letter from Garcetti concerning this general issue, and that this letter requested an additional review of FBI information to identify documents concerning [redacted] LAPD and [redacted]

[redacted] Scruggs was provided with preliminary results of CID's review and was advised that no information was developed which indicated that the FBI possessed exculpatory information for Pratt. Scruggs was advised that additional file reviews were pending to include a review of any possible FBI "wire-tap" of [redacted] and a review of a San Francisco FBI confidential source reporting during 1968/1969. Scruggs agreed that the FBI would provide an Information Memorandum to the Attorney General summarizing its review and that DOJ would complete an appropriate written response to the LADAO request. Scruggs further advised that he anticipated some disclosure of FBI documents to the LADAO regarding this matter. He was advised that the FBI would follow appropriate procedures for document dissemination before disclosure to DOJ.

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On 5/19/94, contact with SSA [redacted] Civil Litigation Unit, LCD, determined that there is an existing United States District Court Order, Judgement #87,2070, 73 Civ.3160, dated 12/16/87, sealing documents and records related to the

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Elmer Pratt, aka "Geronimo";
Inquiry of Gil Garcetti,
Los Angeles County District Attorney;

FBI's investigations of the Socialist Workers Party and the Young Socialist Alliance. The existence of this court order was related to Richard Scruggs, DOJ, in the event that any material relevant to the Pratt inquiry was encountered during the CID review.

On 6/14/94, a meeting was held with Richard Scruggs, DOJ, concerning CID's review of this matter. Scruggs was advised that the CID reviews to date disclosed no information in the possession of the FBI which [redacted] for 12/18/68, or suggest that the FBI concealed relevant information. Scruggs advised that he would discuss these preliminary findings with the LADAO, advising that DOJ would either issue a letter or an affidavit affirming the results.

On 7/11/94, the VC/FU received a letter addressed to Director Freeh, from [redacted] dated 6/16/94, reiterating [redacted] belief in Pratt's innocence and requesting a full FBI document review to reveal the existence of electronic surveillance logs alleged [redacted] [redacted] also provided copies of correspondence from Pratt's attorney alleging the suspected location of the FBI electronic surveillance logs.

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VC/FU reviews of FBIHQ files and subsequent contacts with FBI SF indicated that [redacted] may have viewed the alleged [redacted] during civil discovery litigation involving the Socialist Workers Party V. Mitchell or David Dellinger V. Mitchell civil suits. Subsequently, FBI SF received letters from Pratt's attorney suggesting that [redacted] observed the suspect logs during discovery procedures in the Dellinger V. Mitchell civil suit.

On [redacted] by Memorandum of Richard Scruggs, DOJ, to [redacted], General Counsel, the FBI was requested to provide access to relevant files and documents to representatives of the LADAO.

On 7/14/94, [redacted] Office of General Counsel, FBIHQ, advised that Mr. Scruggs requested that the FBI provide appropriate access to representatives of the LADAO to FBI files and documents relevant to this issue. On same date, [redacted] reviewed the pertinent files and determined that there were no prohibitions which would prevent this cooperation.

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On 7/15/94, Deputy District Attorneys [redacted] [redacted] LADAO, arrived in Washington, D.C., met with the VC/FU, and were

Elmer Pratt, aka "Geronimo";
Inquiry of Gil Garcetti,
Los Angeles County District Attorney;

provided access to documents relevant to their law enforcement responsibilities in the Pratt matter. At the conclusion of this review, the LADAO representatives provided a listing of FBI documents they wanted copied and also a list of additional questions they believed should be answered in furtherance of this inquiry. The LADAO representatives also requested that the FBI complete its review of documents related to the Dellinger V. Mitchell civil suit, or other pertinent civil suit, to fully identify those "wire tap logs" allegedly observed by [REDACTED]
[REDACTED]

During the period 7/25-28/94. SSA [REDACTED]

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On 8/1/94, the Civil Discovery Review Unit was tasked to review documents selected by the LADAO representatives for reproduction and turn over to the LADO. On 8/3/94, the Civil Discovery Review Unit advised that they required the originals of these documents so that a classification review could be conducted and compared against any previous FOI/PA or civil discovery releases.

Elmer Pratt, aka "Geronimo";
Inquiry of Gil Garcetti,
Los Angeles County District Attorney;

On 8/9/94, LA provided unredacted copies of two serials from file SF 91-9235 dated 5/6/69 and 6/5/69. These two serials became an issue because allegations were made by [redacted] to the LADAO that the redacted versions previously released by the FBI concealed the identity of an FBI source who was reporting on Pratt's activities and that this source was [redacted]. The FBI has maintained that [redacted] was not an FBI informant and that he did not report information to the FBI prior to August, 1969.

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b7D

On 8/10/94, per a request of the VC/FU, the SF field office located and reviewed file SF 66-672B. This request was predicated upon the receipt of serials from the FBI NYO which indicated that access, through a civil discovery review, was granted to the plaintiffs in the Dellinger V. Mitchell suit for a review of FBI files reflecting electronic surveillance of the plaintiffs. Subsequent SF reviews located several serials which reported access to the SF field office and review of FBI electronic surveillance logs by [redacted]

On 8/19/94, based upon a request from the LADAO, contact was made with [redacted] Office of General Counsel, FBI, who advised that LADAO representatives may review LA file 157-3447, with the same caveats as established for the LADAO review of files at FBIHQ. These caveats are stated in the Memoranda from Richard Scruggs, Assistant to the Attorney General, to Office of General Counsel, FBI, dated [redacted] and from [redacted] Office of General Counsel to CID, dated [redacted]

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On 8/19/94, LA was advised of FBIHQ approval to grant a review of the aforementioned file to [redacted] LADAO, through coordination with the LA PLA.

On 8/31/94, LADAO representatives [redacted] visited the Los Angeles FBI Office for the purpose of reviewing documents related to LA file 157-3447. They selected several documents as being pertinent to this inquiry and requested that the FBI, under the parameters of this inquiry, make copies of the documents available to the LADAO. On 9/14/94, by airtel to the Director, the FBI Los Angeles, forwarded copies of these documents to FBIHQ for processing by the Civil Discovery Review Unit.

Elmer Pratt, aka "Geronimo";
Inquiry of Gil Garcetti,
Los Angeles County District Attorney;

On 9/20/94, the Civil Discovery Review Unit, FBIHQ, completed its review of the documents requested by LADAO [redacted] during the review of 7/15/94. Redacted versions of these documents were provided to the VC/FU on 9/20/94. The Civil Discovery Unit will continue its review of the documents identified in the LA airtel of 9/14/94.

In summary, the VC/FU review of this matter did not identify any information in FBI files which were germane to the allegation that the FBI possessed information from an electronic intercept [redacted]

b3
b6
b7C

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☒ AIRTEL

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 2/16/94

TO : DIRECTOR, FBI
 (ATTN: [REDACTED] UNIT CHIEF,
 CID, VIOLENT CRIMES UNIT,
 ROOM 5042)

b6
 b7C

FROM : SAC, SAN FRANCISCO (197-39)

SUBJECT : ELMER PRATT, aka
 "Geronimo";
 INQUIRY OF GIL GARCETTI,
 LOS ANGELES COUNTY DISTRICT ATTORNEY
 OO: FBIHQ
 BUDED: 2/18/94

Re FBIHQ airtel to San Francisco, captioned as
 above, dated 2/7/94.

Enclosed are two (2) copies each of the following:

1. FBIHQ airtel, with enclosures, to Los Angeles, San Francisco and Boston dated 4/23/79;
2. San Francisco airtel, with enclosures, to FBIHQ dated 5/15/79;
3. San Francisco airtel without enclosures to FBIHQ dated 5/29/79;
4. FBIHQ airtel to San Francisco, Los Angeles, Sacramento and San Diego dated 9/16/80;
5. San Francisco airtel to FBIHQ dated 10/9/80;
6. San Francisco airtel to FBIHQ dated 10/15/80;
7. In Camera Production (The background of this enclosure is set out in San Francisco airtel dated 9/16/80, enclosure number five.)

ENCLOSURE

② - Bureau (Encls. 14)
 1 - San Francisco
 JDLW/pkv
 (3)

ENCL. BEHIND FILE

b6
 b7C

Approved: SEW

Transmitted

(Number) (Time)

Per

file to 62 A HQ 1073771

SF 197-39
JDLW/pkv

The above enclosures are being furnished to FBIHQ for background information that is relevant to the issue raised in referenced airtel.

Pursuant to referenced airtel, San Francisco conducted yet another thorough and complete page-by-page file review within the time frame beginning in the Fall of 1968 through February of 1969 of those files concerning ELMER "GERONIMO" PRATT, the Black Panther Party (BPP), [redacted]

[redacted] Due to the content of both affidavits, those files dealing with the litigation of BPP vs. [redacted] and People of the State of California vs. [redacted] were included in the review. Consistent with previous file reviews, nothing was located indicating the existence of any wiretap or wiretap logs concerning [redacted] The first reference to PRATT was in March of 1969.

However, it should be noted that pursuant to an earlier file review concerning PRATT involving this same issue, i.e., his presence in the San Francisco Bay Area on [redacted] San Francisco file [redacted] was reviewed, as it was cross-referenced to the BPP file. Serial #84 of that file

[redacted]

At present, San Francisco has been unable to locate any file documentation confirming that the affiants were in the Federal Building reviewing FBI wiretap logs as claimed.

Based upon the repeated inquiries and resulting in-depth file reviews conducted, it is San Francisco's strong opinion that no such wiretap log entry [redacted] exists as claimed by affiants. This is further buttressed given the content and background of [redacted]

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b3
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b3
b7D

SF 197-39
JDLW/pkv

as claimed [REDACTED]
[REDACTED]
[REDACTED]

b3

and it would be reflected in
San Francisco's files.

Attempts by San Francisco to locate and interview
both affiants are currently underway.

At this time a tentative appointment has been
scheduled with [REDACTED] on Thursday, 2/17/94, at
11:00 a.m.

b6
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[REDACTED] was finally contacted after
substantial searching for her whereabouts. She indicated on
2/16/94 that prior to talking to anybody from the FBI she
wanted to first consult with an attorney. She then indicated
she would recontact the San Francisco Office.

San Francisco will follow with results of the
interviews of either/both if and when they occur.



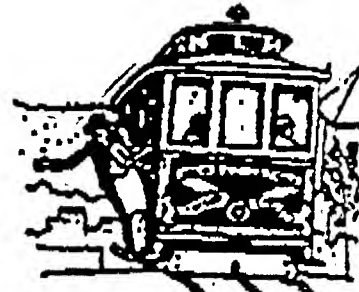
San Francisco Office

**FBI FACSIMILE
COVERSHEET****CLASSIFICATION****PRECEDENCE**

- ☐ Immediate
☐ Priority
☒ Routine

- ☐ Top Secret
☐ Secret
☐ Confidential
☐ Sensitive
☐ UNCLAS EFTO
☒ UNCLASSIFIED

Time Transmitted: _____

Sender's Initials: CAFNumber of Pages: 6To: FBI HQ
(Name of Office)Date: 8/12/04Facsimile number: 202-324-3089b6
b7CAttn: _____
(Name)Room 5042 Telephone No. X 4294From: SF
(Name of Office)Subject: ELMER PRAHSpecial Handling Instructions: callimmediately6011 HQ-1073771-13

Originator's Name _____

Telephone: X 7405b6
b7C

Originator's Facsimile Number: _____

Approved: _____

ENCLOSURE

62A/AQ 1073771

FBI/DOJ

(treat as original)